HOUSE OF COMMONS

Housing, Communities and Local Government Committee

Oral evidence: Leasehold Reform, HC 1468

Monday 10 December 2018

Ordered by the House of Commons to be published on 10 December 2018.

Watch the meeting

Members present: Mr Clive Betts (Chair); Bob Blackman; Mr Tanmanjeet Singh Dhesi; Helen Hayes; Andrew Lewer; Teresa Pearce; Liz Twist.

Questions 268 - 373

Witnesses

I: Gillian Boyle, Strategic Development Directorate, Manchester City Council, Larissa Reed, Executive Director for Neighbourhoods, Communities & Housing, Brighton and Hove City Council, and Amy Simmons, Head of Policy, National Housing Federation.

II: Anthony Essien, Chief Executive, Leasehold Advisory Service (LEASE).

III: Jonathan Smithers, former President, Law Society of England and Wales, and Beth Rudolph, Director of Delivery, Conveyancing Association.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Gillian Boyle, Larissa Reed and Amy Simmons.

Q268 **Chair:** Good afternoon. Thank you very much for coming to the Committee's third evidence session of our inquiry into leasehold reform. I will come to the panel in a second. I will just ask members to put on the record any particular interests that might be relevant to the inquiry. I am a vice-president of the Local Government Association.

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

Liz Twist: I employ a councillor in my office.

Bob Blackman: I am a vice-president of the LGA and I have a small property portfolio.

Q269 **Chair:** Now it is over to you; could you say who you are and the organisation you represent today, please?

Amy Simmons: Hello. My name is Amy Simmons. I am head of policy at the National Housing Federation. We are the trade body for housing associations in England. Our members own and manage in the region of 2.6 million homes and house 6 million people. Specific to this inquiry, we provide a range of affordable housing tenures, including social rent homes, and provide in the region of 160,000 shared ownership homes, and all those shared owners are leaseholders. We also house a number of additional leaseholders resulting from Right to Acquire and Right to Buy homes, and a small but increasing number of member homes that have been developed for outright sale.

Larissa Reed: My name is Larissa Reed. I am the executive director of Neighbourhoods, Communities and Housing at Brighton & Hove City Council. The only leases we have are Right to Buy leases.

Gillian Boyle: My name is Gillian Boyle. I work in strategic development, where I head up private investment estate. I also work as a development manager on promoting major development projects. I work very closely with our strategic housing team on housing developments, although the city council itself does not directly manage any property. It does, however, have a large social housing stock, Northwards, which is managed by an arm's length management company.

Q270 **Chair:** Thank you very much for coming. Could you explain your understanding of how the responsibilities and rights of leaseholders in a block of social housing differ from those of leaseholders where the freehold is with a private organisation?

Amy Simmons: In a lot of respects, there is fundamentally very little difference across the two. It is important to understand the difference between a leaseholder and a tenant, and the expectation on a leaseholder as a property owner and the responsibilities that go with that. The major difference, for our members, is the level of redress that those leaseholders have. If you are a leaseholder of one of our members, a social housing provider, if you are not happy with the way that your home is being managed or the relationship that you have with the freeholder, you can go through the housing association complaints mechanism, and you can seek redress through the Housing Ombudsman. There is also the first-tier tribunal. Not all those levels of redress are open to the private sector.

Larissa Reed: We do not pass VAT on in our service charge, which is a positive. However, one of the differences we see is that we have a councillor leaseholder working group, which is constantly looking at how we can improve services for leaseholders. We also have a city-wide leaseholder action group, where any leaseholder, once a year, can vote to have representative leaseholders, and we meet with those quarterly. That redress where the council is involved makes it different for social leaseholders, because they have more of a voice than some private leaseholders.

Gillian Boyle: I would endorse everything that has been said. Also, in capital works there is generally a limit of £10,000. If works cost more than that, that is not passed on to the leaseholder; it would be the registered provider's reserves or, with the Northwards council-owned stock, we would use the housing revenue account. Instances of that are fairly rare at the moment, but obviously with the follow on from the Grenfell fire, with all the fire assessments, there could be larger works that are coming their way.

Q271 **Chair:** That is what is supposed to happen, but is not the reality that very often leaseholders are an afterthought? Councils or housing associations manage their social housing stock and their fundamental concern, because the vast majority of individuals residing in properties are tenants, is how much they are going to pay, for what work, through the housing revenue account or the finance of the housing association. Leaseholders are generally an afterthought: "That is what we are going to charge; we will bill them as well." Is that not how it happens in practice?

Larissa Reed: Absolutely not.

Chair: Not in Brighton, but elsewhere perhaps.

Larissa Reed: I do not think our leaseholders would let us do that.

Gillian Boyle: More of our problems are in private stock, where there are some difficult cases at the moment. It has not been a massive issue in Manchester. We probably do not have as many leaseholders in social rented stock as there perhaps are in London, but there are some. There is quite a lot in one of the PFIs in Brunswick, but it has not been a major problem at the moment. As I said, post Grenfell, with all the fire assessments, that could change. It is made very clear to leaseholders when they buy the properties that there will be a service charge that they have to pay, but we have not had some of the cases that have hit the news in London—not at the moment.

Amy Simmons: Part of the work we have recognised, as a sector—and we have been developing a charter based on the recent Green Paper response—is about making sure that residents, including leaseholders, are clear about what they can expect from their landlords and how they can hold members to account. What we recognise is that, while there is guidance out there—and we provide our members with further guidance and help them to promote good practice—there probably is more work to do, and whilst there are areas of really great practice across parts of our sector, we cannot afford to be complacent and we do need to do more.

Q272 **Chair:** Does that guidance require housing associations and councils to specify to leaseholders precisely what they are getting for the charges that are levied on them? In other words, rather than saying, "There is £3,000 for grass cutting this year," do they say, "There is £3,000 for grass cutting and you will get your grass cut six times a year"? It is that sort of detail that is required, but it is very rarely provided, is it?

Amy Simmons: Overall, it is looking at whether what is provided is transparent and whether you can hold someone to account for that. I would not know about the level of detail that is provided, but if residents, leaseholders or tenants are not happy, that is something that, as a landlord, you should take into account and have a conversation about how that can be improved and made better.

Larissa Reed: We do provide all the evidence of leasehold charges if it is requested.

Q273 **Chair:** That is it—"if requested". Why do people have to request it?

Larissa Reed: We have been looking at how we can improve, and one of the improvements can be to make sure that, for both our tenants and our leaseholders, we are very clear about what all the service charge covers: is it a six times a year cost? Whatever that is, we send that out previously. We do not do that at the moment, but that is certainly something that we could do.

Gillian Boyle: It is very similar in Manchester.

Q274 **Chair:** But you would never do that for tenants, would you? That is the difference. A building gets repaired and the tenants think, "Well, that is what the council has done." The leaseholder, when you send them a bill, might want to know a bit more about it. Should they not automatically get that information?

Larissa Reed: Yes, but what we also know is that more and more tenants also want that information, so it is something that we need to give cross-tenure.

Gillian Boyle: Yes, absolutely.

Amy Simmons: I would agree with that.

Q275 **Chair:** Do you demonstrate clearly that you do not cross-subsidise work—in other words, get the leaseholders to pay a bit more because they are an easy target?

Larissa Reed: We verify all our block costs for service-charging. Our certificates of expenditure are very clear on block costs and the percentage that each leaseholder will have to pay. I am confident that we do not cross-subsidise.

Amy Simmons: It is about making clear the difference between a leaseholder and a tenant and what is expected within those relationships with a landlord. Greater transparency around that would help quite a lot. We recognise that some of the processes around these areas have been in place for quite a long time, and it might be an opportunity to have some sort of review about how things are working in practice. We would be supportive of that in an effort to become more transparent and accountable.

Q276 **Bob Blackman:** Leading on from what Clive has been saying, a lot of the evidence presented to us has been about the concern that leaseholders in the social sector have that the maintenance charges seem to be non-transparent, and that they are not very good in terms of the service provided. How are the costs determined and how are the leaseholders consulted on the makeup of those services?

Gillian Boyle: As I say, I do not manage the Northwards stock. I did have quite a long conversation with the guy who manages the HRA. The rest of the council stock has been sold off and is managed through RPs.

Q277 **Bob Blackman:** That is another concern that is raised: that the council has divested itself of the responsibility and then it washes its hands of providing the service. A lot of people say that they cannot get the service, or indeed the third-party service, and find out exactly what they are paying for and why.

Gillian Boyle: The standards vary between the Northwards stock, which is council-owned property and the rest of the RPs, and some are better than others. There has been a lot of consolidation, with smaller RPs being bought out by larger ones, perhaps in an effort to improve the maintenance. I do not think there is a massive issue in Manchester regarding the social tenants. We have more of a problem with private blocks at the moment.

Q278 **Bob Blackman:** We are concentrating, at the moment, on what is the responsibility of the local authority. I accept completely that we have to make sure that private landlords do their job, but we are concentrating on the social landlords, the housing associations, the third-party organisations and the councils.

Gillian Boyle: The level of information that tenants and leaseholders get can always be improved and, as Amy says, we would be supportive of that, but I do not think there is a major problem in terms of leaseholders being ripped off.

Bob Blackman: We are no doubt going to get some communication from leaseholders from your local authority now.

Gillian Boyle: I am sure there will be some.

Larissa Reed: When we talk about maintenance, we do responsive repairs, planned maintenance and major projects. We find that the problems come with the major projects, where leaseholders can be faced with bills of £25,000 to £30,000—we do not cap the bills—and we know that leaseholders in our area get really quite upset about that. Having said that, we have just received a first-tier tribunal decision on five high-rise buildings where we carried out exactly these works, and it turned out that an independent expert calculated the cost within 1% of the costs that we incurred. The tribunal found that the works were reasonably incurred and to a reasonable standard, but that does not stop leaseholders who are left with a bill of £25,000 to £30,000 feeling very aggrieved that that is the case. There is a balance between works that need to be done and how you do them.

Q279 **Bob Blackman:** Taking those examples, were leaseholders informed in advance of the work that was going to be done and what the cost was estimated to be?

Larissa Reed: On these ones, they would receive the proper notification of the estimate.

Q280 **Bob Blackman:** Proper notification is one thing. I am talking about them being consulted before the work could begin.

Larissa Reed: Yes. They did have consultation before the work began. What we do now, however—

Bob Blackman: Sorry, but can I just cut across you again? Consultation, in my experience in local authorities, is notification that, "We are going to do this." Consultation means, "What do you think of us doing this." Was it a consultation or a notification?

Larissa Reed: At the time, I think it was a consultation, but we have worked with leaseholders and members, and what we now do is we will meet before we even talk about any form of section 20 or any form of formal consultation. We will say, "These are the works that we believe need to be done." We enable work with the leaseholders. We get a jointly commissioned surveyor to come and check to see what works are coming, then leaseholders will have a voice to say whether those works will happen in one go or over a period of time. We do need to balance that, however, with the needs of the tenants, who also want these works to be done.

Q281 **Bob Blackman:** Do you think there should be a change, to have a cap on the total amount that anyone should pay, given the circumstances that are described elsewhere?

Larissa Reed: If you talked to any of our leaseholders, they would say yes. If you talked to our tenants, they would say no. Any money that we spend that is not leaseholder-paid comes out of our HRA and our tenants' rents. That is something that tenants feel very strongly we should not be doing, because they feel that the leaseholder has the benefit in that, once we have spent the money on the works, the value of the property often increases as a result.

Amy Simmons: I would like to add to that. It is an issue about the landlord being a steward for the building in the long term. You are looking after a building throughout its lifetime and making sure it is safe and well looked after for people to live in, whether they are a leaseholder or a tenant. Our members take a long-term view about the homes they manage. It is not in their interests to do work poorly or to a greater level of cost. A lot of them do recognise that some of the bills that leaseholders might be faced with are sometimes difficult, in terms of just the amount of money involved. Our members are very open to discussions about how that money is paid and there are lots of arrangements to make sure that there is flexibility in how that work can be taken forward.

Q282 **Bob Blackman:** There are two aspects. We have mixed the major works with the general work that has to be done, which might be of a minor nature and so on. How do you consult on those particular issues so that leaseholders can say, "Okay, I can understand why that is and why we have come to that cost"?

Amy Simmons: I cannot talk specifically about individual members, but generally there is particular guidance on how you consult members, when you do it and how long it takes.

Q283 **Bob Blackman:** Does your organisation give guidance?

Amy Simmons: We have best practice guidance and we help members if they have problems with it. We would always promote that our members do as much as they can to follow any guidance. It is in their interests to have a good relationship with their residents generally, and to make sure they understand what needs to be done and that it is done in a way that supports the building over its lifecycle. It is hard to talk about what individual members might do, but we would always support them on best practice. We know that if there is still an issue, there are ways that residents can get redress.

Q284 **Bob Blackman:** Can I come back to you, Larissa, on one or two specific issues? One is that some leaseholders have been sent bills of between £37,000 and £100,000. How can you justify those bills and do you give people time to pay? What arrangements do you make with them?

Larissa Reed: The only estimated bill that was ever sent out that was close to £100,000 was sent out in error and, a week later, the proper bill was sent out. The highest bills are around £37,000. We have a number of payment methods, including where there is a charge put on the property and there is no payment required until that property is sold, like an equity loan. We work on a case-by-case basis to say what is best for that person in that circumstance.

Bob Blackman: This is a massive amount of work, is it not? Quite clearly, £37,000 is.

Larissa Reed: £37,000 is a lot of work.

Q285 **Bob Blackman:** Would that leaseholder be consulted in advance to say, "We are planning to do this work, and it is going to cost quite a lot of money"—even if they did not know exactly how much, which I can understand—and then give them the thought processes of what to do? Clearly, they cannot sell their property or do anything around that. They are stuck, are they not?

Larissa Reed: Yes, and we now have the converse issue, where we are telling people very early and people are then talking about selling their property and then saying they cannot sell their property. Because we give an estimate, we give a maximum amount of cost, and of course that means that people are struggling or saying that they are having difficulty in selling their flat, so there is a problem there.

Q286 **Bob Blackman:** If people are receiving bills for, say, £37,000, how does that equate to the cost of them buying the lease in the first place?

Larissa Reed: That depends on when they bought the lease.

Bob Blackman: Yes, but roughly. You must have some rough comparisons.

Larissa Reed: The average two-bedroom flat in Brighton and Hove sells for about £250,000 in today's market. However, a Right to Buy purchase 10 or 15 years ago could have sold for as little as £80,000 or £90,000 with the discounts.

Q287 **Bob Blackman:** It is almost 50% of what they may have paid for it then.

Larissa Reed: Yes, if they paid for it then, but it would still be worth £250,000 now.

Q288 **Bob Blackman:** Yes, I understand that, although only if the work is done.

Larissa Reed: Yes, if the work is done. Those are the sorts of costs that we have. Where we have done large projects, some of the projects have taken two years. The bill has come in the September following that, so that is three years from when the works began on that site. We have to look at how we can do that better, because that is something our leaseholders do not like.

Q289 **Bob Blackman:** Is it fair to say that these are very old properties?

Larissa Reed: A lot of the properties were built in the 1950s, 1960s and 1970s. Because of some of the building methods that were used then, we have to do repairs to keep them up to standard. We know that the works that we did certainly on the five blocks were reasonable works. As my colleagues have both said, we think the next big challenge will be any work that is required as a result of any Grenfell inquiry.

Q290 **Chair:** Do you ever allow leaseholders to have some say in the selection of the contractors to do this work?

Larissa Reed: We currently have a 10-year agreement with Mears, and that is for both responsive and major works. However, from March 2020 we are bringing the responsive repairs element in-house. We will also have a framework where we will get capital works from, and leaseholders and tenants will be involved in choosing those contractors to go on the framework, so they will be involved. Leaseholders were also involved in choosing the original Mears contract eight years ago. However, that was eight years ago and times change.

Gillian Boyle: In Manchester, with the Northwards stock, there are two levels of work. A lot of the works are done by a framework contractor, which has been Mears as well. The housing associations have their own contractors, but they have tenant management committees, which will include the tenants and the leaseholders, so there is a process to involve tenants. Whether it is as good as you would want and whether the information is to the level is an issue, but there is a process there that works reasonably well.

For major works, we have three major PFIs, which are where the big investment is going in Manchester, in Miles Platting, Brunswick and Grove. There is a whole process there of involving tenants and leaseholders, because it is not just about the capital; it is about the 25-year management.

Q291 **Chair:** You must have had letters from leaseholders, as I have, saying, "I can get a contractor to do the work for half this price."

Gillian Boyle: Yes, I am sure. I do not get them directly, but they do come.

Chair: And when I sometimes look at the work, I think they may be right.

Larissa Reed: That is, to a degree, right. However, as a council, when we had the Mears contract we wanted the contractor to ensure that they had apprentices, to ensure that they gave us a lot of information that, as a democratically elected council, we needed. Unfortunately, there is a cost that people build into that. We have to ensure that people have a track record of delivery before they are allowed to work on our estates. Yes, probably someone can find somebody who can do that piece of work on their flat, maybe, but we are also talking about doing millions of pounds’-worth of work on flats and all of the associated requirements that we have, as a council, and that costs money.

Gillian Boyle: You are touching on a wider issue here to do with public procurement. This is not just on social housing; it is the same on private schemes and private commercial schemes. It just costs more, because you have to go through a tender process and you have to go through the OJEU process. You end up with frameworks where you do not always get, perhaps, as good value as if you can just appoint a particular contractor who you know is going to do a good job, if you are a private organisation. We have done commercial schemes and I know for a fact that if I was a profit organisation, I would probably get that 10% to 20% cheaper. There is a cost in public procurement.

Chair: There are also economies of scale somewhere as well.

Gillian Boyle: It is just more expensive.

Q292 **Helen Hayes:** Do those framework contracts and the length of time that they are usually for make it difficult for you, as local authorities, to manage the contractor and control the quality? If I think about my own situation in my constituency, one of my local authorities employed Mears for a year on a temporary contract, because the previous contractor had failed, during which time they performed very well. They were then successful in bidding for the permanent contract and, after that time, their performance deteriorated such that the local authority has just taken the repairs contract back in-house. That was failing tenants, but it was also delivering exceptionally poor value, in some instances, for leaseholders.

Gillian Boyle: Some of it is about the timescale. I have managed some other contracts to do with property management and some of the contracts are just too long and, after a while, people just become sloppy on either side. Sometimes it is not clear what their duties are and sometimes there are not enough people on the contract. You will end up with these frameworks for large amounts, and sometimes only a few contractors can do that work. They are just managing contractors.

I will give you an example—it is not a social housing contract; it is a private estate that we manage, but it is very similar. We had to paint all these blocks for the leaseholders, who own their own properties. We were doing it through a council framework and they could not understand. They were getting complaints from the tenants all the time that the standard of work was terrible, they were slow—it was awful. When we got the quote back from the in-house contractor who was on the framework, we found that the painting contractor was three steps down the line. That went through an internal process and then it went out to the contractor, so by the time you add all the overheads, this scheme was costing about £50,000. The quote from the painting contractor themselves was £18,000. That is the difference.

There are a number of reasons why it is not always the best value. There needs to be a way of sometimes getting smaller contractors in, because these contracts tend to be managing contractors, and all the work is done by subcontractors, so everyone is taking their cut. That is the problem.

Q293 **Liz Twist:** Leaseholders can challenge their service charges and other costs through the tribunal system. However, we have heard that, in practice, many leaseholders are reluctant to go down that route because of the high cost and inherent imbalance of power between leaseholders and freeholders, including social housing providers. How should dispute mechanisms be reformed?

Amy Simmons: It is hard to be specific, but we would support any further review that did take place. Our members would be very keen to give examples and work very closely with any review that did come about. It is hard to be really specific without looking at examples, I am afraid.

Q294 **Liz Twist:** As I understand it, the Government have had a consultation process, "Strengthening consumer redress in the housing market", which started on 18 February. Did the NHF contribute to that consultation?

Amy Simmons: I believe we have, and we can make sure that we write to you with any evidence that we provided.

Larissa Reed: We have had about 500 disputes over the past 10 years, and only four of them have gone to tribunal hearings. One of the things that we would absolutely welcome is a more specific timeline—for example, a year—and then, if there is no resolution, there is an automatic referral to an adjudicator or tribunal. We do find that, in trying to negotiate with a number of leaseholders and a number of different groups, there sometimes is no resolution that people have. We have also found that people believe, albeit wrongly, that if you hold on and hold on, we will reduce the service charge bill. Of course, we cannot do that when it is public and tenants' money that we are using.

We know that when we have gone to the tribunal hearings, we have not been asked to limit the service charge significantly in any of the cases, and, in fact, in three of the four not at all. Where councils are certain of their costs and certain of their position, there needs to be a way that it can be resolved quicker.

Q295 **Liz Twist:** I would like to come back to that issue, if I may, but can I just stick, at the moment, to whether there are better ways of redress that address what leaseholders believe is the imbalance between the leaseholder and the freeholder, who may or may not be in social housing?

Larissa Reed: More information could be given at the beginning, so people are very clear and it is very demonstrable exactly what is being quoted for and paid for. One of the things we are doing is having more clerks of works and, in the new arrangements, working with leaseholders, so they are picking up any issues throughout the work. That is something that our Leaseholder Action Group asked for when we did the work on our new arrangements. The more information you can give at the beginning, the better, so that when you get to the point of giving a bill, people are very clear about what that bill is there for.

Gillian Boyle: I do not manage social housing estates, but obviously I do speak to colleagues, and it is very similar issues that we face with our private estates as well. My view is that you have to involve people from the outset. The more they are involved in the process, the less they are likely to be disgruntled with the final result. They need to be very clear about the cost of the work and the range of the work in the first place, in terms of saying, "Do you want this work to take place?"

We have a problem at the moment with the installation of sprinklers in some of the social housing blocks. I know, from speaking to housing colleagues, that some of the tenants do not want this, because the cost is too much for leaseholders, or the disruption is too great for tenants, but they have been involved in the process. The first thing is to involve them in the process so that they are aware, so that when there is a problem they are part of the process. People are more likely to complain if they feel that something is being done to them rather than them being part of that process. I have been involved in disputes that have nearly ended up with the ombudsman, and really it is because there was just a lack of communication at the outset. People then get into fixed positions, and you think, "We have to try to defuse this."

Q296 **Liz Twist:** I just want to come back to this question of the imbalance of power. If you are one person in a block of flats having to pay quite a large amount, as the Chair was asking about, the cost of repairs might be a very significant amount in relation to the initial price you paid—I think we heard 50% in the example given. Do you think there is anything that can be done to address that essential imbalance, not just for social housing but for all leaseholders working with freeholders?

Gillian Boyle: It is about them having more transparency about the information on the service charge or the cost of the works. The whole process has to be made easier for individuals. It is always harder if it is an individual than being part of a group, to be able to question, because sometimes there is a balance of power, and that is the same in lots of different areas of the public sector.

Q297 **Liz Twist:** That is quite a big chunk, is it not? If you are asking me to pay 50% of the value of my flat for repairs that you consider are essential and, in an ideal world, they might consider essential, that is a big chunk. How are we going to tackle that problem? If I do not have £50,000 in the bank, how am I going to pay that money? Whether or not you have consulted me really does not make a lot of difference to my bank balance.

Larissa Reed: First, we have conflated two figures. In terms of the amount, £37,000, somebody may have bought their property 10 years ago; that is not what it is worth now and it is in terms of today's money that we are doing that, so it is not 50%. We also have to think about when other people buy social housing, in terms of Right to Buy. They might have new windows put in or a new front door, and they have to pay. I understand that they do not have to do it in the way that leaseholders have to do it, but there is a benefit to leaseholders when they have new windows, for example, in reduced heating bills.

The thing about the tribunal is that it does level the balance of power, because in most cases the tribunal will be very harsh to the council and very welcoming and helpful to leaseholder groups. We just know, from the cases that we have taken, the work that we have done has been seen to be reasonable.

There is an issue when you talk about the balance of power, which is that it is also about the balance of responsibility. If we do not do the work, we are then open to disrepair claims, so we need to do the work and we need to consult tenants, but ultimately that work needs to be paid for, and either the tenants pay for it or the leaseholders pay for it. There is no alternative.

Q298 **Liz Twist:** It sounds as if you feel that, from your perspective, you are quite happy with how things are working out at the moment. Is that right?

Larissa Reed: No, we would like more certainty about an independent process that can happen. It could be a mediation process before the first-tier tribunal or a timescale. We have some leaseholders who go through and through this and cannot really see an end and do not know what is going to happen. We really would like to stop that. We would like to have something clearer, so that leaseholders and the council know, when they are in dispute, what the stages are and what the timeline for those stages is.

Q299 **Liz Twist:** Can I ask all three of you whether you took part in the consultation process that the Government set up?

Gillian Boyle: Yes.

Larissa Reed: Yes.

Amy Simmons: Yes.

Q300 **Liz Twist:** Were there any headline points that you would like to tell the Committee about that were made in that consultation? Ms Reed, you have probably answered this.

Gillian Boyle: I was looking at it more from the private side, in terms of freehold sales, the cap on leaseholds and looking at the common areas. I made quite a lot of comments on that on behalf of the city council.

Liz Twist: You are going to let us know.

Amy Simmons: We will, but we were broadly supportive of the work that the Government have done to date and the exemptions that have been agreed.

Q301 **Liz Twist:** Ms Reed, this is for you specifically. Leaseholders from Brighton have told us that the council has stated publicly, on more than one occasion, that when Brighton & Hove Council is taken to first-tier tribunal by leaseholders, you always win. Do you think that is a sign of a healthy system—that the freeholder always wins?

Larissa Reed: The other part of that is that we have had over 500 disputes and 90% of them have been resolved at first and second stage. The fact that we have taken only four to tribunal means that we do it only as an absolutely last resort, when we have exhausted everything else. It is healthy. If we had taken 500 to tribunal, that would be very different, but we take it only as an absolutely last resort and we take it because we and the leaseholders need a resolution. The healthiness of it is the 90% of the 500 disputes that have gone without going to tribunal.

Q302 **Mr Dhesi:** Let us explore the non-adoption of common areas. Lots of leaseholders have told the Committee that they are charged uncapped estate management fees on their new-build properties. Indeed, during the second evidence session one of the developers, Bellway, told the Committee, "Local authorities are less willing to adopt public areas, roads, sewers, street lamps… They do not want the obligation and cost that goes with it". Often they have to go to create a residents' management company to manage that issue.

It is good that we have Ms Simmons from the National Housing Federation here today, because it has said, "Some local authorities are showing increasing reluctance to adopt common parts of new developments. This means that areas of grassed open space, and sometimes even drains, roads and street lighting, do not become the responsibility of the local authority. In effect, the scheme is left with no option but to operate as a private estate even if this not the preferred option of the developer or the residents".

Why are local authorities reluctant to adopt public areas on new developments?

Gillian Boyle: I am not sure that local authorities are unwilling. A lot of this comes back to the scheme at the beginning, with planning. Ideally, every square inch of that scheme should have a clear system of management. Whether that is everything goes off in individual freehold plots and the rest of it is adopted highway, that is probably the best solution for housing developments and is really what you should aim for.

These common areas are a problem on a lot of estates, and I am dealing with cases at the moment of schemes that were built 10 years ago, of common areas that nobody really wants to manage. Developers want to walk away, and the residents are not clear about the charges for areas. These are areas that lie outside the adopted highway, as opposed to the highway itself, or may be common areas in flats. There are provisions in leases to charge ground rents, but it is not really a ground rent; it is really an estate charge for these areas. It is not always collected. The developers want to walk away. At the moment, I am negotiating with a registered provider to take on the head lease to manage those areas, but ideally you are better off not in that situation in the first place.

Q303 **Mr Dhesi:** Surely that should be negotiated by the local authority at the outset.

Gillian Boyle: Absolutely. In a lot of cases it is the result of bad planning decisions, to be honest with you.

Q304 **Mr Dhesi:** There is nobody else making the planning decision apart from the local authority.

Gillian Boyle: Absolutely. I am directly involved in development and when I am looking at schemes, I would never want to be in a position where I had pieces of land that I did not know what was going to happen to. On a housing estate, ideally, it should be freehold sales unless you have some sort of shared ownership, in which case you may need a leasehold situation. That would normally be managed by an RP, which is set up to manage areas. Some of these are private estates where a local authority has developed it and there are vague references to management companies being set up, which very often have not operated properly.

The scheme should really be looking at including the areas in plots. If you are going to have common areas, it has to be very clear whether that is going to be a park that the local authority is going to manage or whether, more normally, it is small bits of land. If you can get the highways to adopt them, great. If not, you have to think very long and hard about how that is going to be managed.

You can have some quite bespoke areas. These may be in more inner-city areas, or the edge of city centre, where the density is higher, where you are going to have common areas because of the design. How are you going to manage those? If it is a small number of houses, you do not really want to set up a management company that has no involvement with the people. There is an ideal way that you can deal with that, and I am dealing with an example at the moment. All the houses will be sold off on 999-year leases. The freehold will then be owned by all the individual houses—there are only 20 of them—because there are common areas there. There is a little parking court, there are some landscaped areas and some other common areas, so it is not feasible to split that whole area into housing plots. You can have common areas that are managed effectively. In this example, the people managing that area are the freeholders and the freeholder is each individual owner, but that is not always the case. Where you have large housing estates there could be 200, 300 or 400 houses. It can be very problematic.

I am not sure about Bellway's comments, to be honest with you. I know Bellway is one of the builders that has been charging some of these rents, but normally you would not want to have highways and sewers that lie outside the adopted highway. That is never a good system, unless you have only three or four houses and there is a private drive—that is very different.

Q305 **Mr Dhesi:** To me, it just seems a wholly unsatisfactory situation, and it is leaseholders who are left holding the can. Is that what is happening in Brighton as well, where the local authority, from the outset, does not get control of it and then it is left to the leaseholders?

Larissa Reed: No, we do not have that at all in Brighton.

Q306 **Mr Dhesi:** You can categorically say that, in your local authority, you always adopt all public areas of new developments?

Larissa Reed: Yes. For all of our new developments, we have adopted all the public areas.

Q307 **Mr Dhesi:** That is good to hear, and obviously it is on the record. Ms Simmons, what are your thoughts?

Amy Simmons: It is becoming increasingly more common that members are telling us about scenarios where there are parcels of land or areas of schemes that have not been adopted. We would support that where freeholders are obliged to pay for the upkeep of those specific areas through some sort of charge, they should have the same rights as leaseholders to the first-tier tribunal so that they are protected and have redress in that way. That is really important.

Chair: Thank you very much indeed for coming to give evidence to the Committee this afternoon. That is appreciated, thank you.

Examination of witness

Witness: Anthony Essien.

Q308 **Chair:** Thank you very much for coming this afternoon to give evidence to the Committee. Could you just say your name and the organisation you are representing today?

Anthony Essien: Good afternoon, Chair and members of the Committee. My name is Anthony Essien. I am the chief executive of the Leasehold Advisory Service, commonly referred to as LEASE. We are sponsored by the Government and the Welsh Government to provide advice to leaseholders and park home owners in England and Wales.

Q309 **Teresa Pearce:** Good afternoon, Anthony. What are the main inquiries that arise from leaseholders who call your service for advice? Are there particular inquiries that are more common than others?

Anthony Essien: I can give you the headlines, Ms Pearce. It tends to be around service charges and management, in the main. There is a substantial bulk around lease extension as well, but it has been consistent over a number of years that it is around service charges, which is a management issue, obviously, for residential lessees. Service charges around the country can be substantial and you have just heard quite a lot of information about that.

It is fair to say that the lessees who come to us, of course, are not coming to say, "My service charges are fine, and I am very happy with my landlord." The amounts range from the relatively small to the large. I have been before this Committee before, in 2006, when you were doing some work on decent homes, where the bills were, again, remarkably large. I cannot say necessarily they are as big as that on a consistent basis, but we are talking about substantial sums of money that lessees are being asked to pay at very difficult times.

Q310 **Teresa Pearce:** Is it the size of the service charge or the clarity or lack of transparency, or is it all those things?

Anthony Essien: It can be all those things. Very often it is about sheer scale, but it is also about problems of clarity. We did some work not so long ago with the tenant participation advisory service on engagement for social landlords when it comes to major works, with some examples of good practice there. What is apparent is that there is a lot of range between landlords—private and social sector—when it comes to how they deal with their lessees. Some are decent at engagement—I do not think there is anybody who is excellent—and there are others who are poor, for various reasons. Some social landlords will say that they are not terribly well resourced in that space. Others would say that perhaps they have bigger issues to address, because much of their stock has been sold off vis-à-vis LSVTs—large-scale voluntary transfers. It is difficult to nail down any one thing; it can vary quite considerably.

Q311 **Teresa Pearce:** We have heard different points of view from leasehold campaigners, developers and freeholders as to the scale of the problem on onerous ground rents. In your experience, what would you say is an onerous ground rent and how many people do you think are affected by that?

Anthony Essien: I would say an onerous ground rent would be anything above 0.1%, perhaps, of the value of the property. The Royal Institution of Chartered Surveyors did some work on relativity in 2009. They identified the adverse effects of onerous rents on relativity. They came up with a figure, which was at the top end, of about 0.25% of the value of the property. Our sense is that 0.1% perhaps reflects capital growth since then, particularly in London, where, from the last bit of information I have seen, the average property value was approaching £500,000. Anything above 0.1% in London is starting to be a problem, especially if the reviews are very regular, which again has been a particular problem lately.

Q312 **Teresa Pearce:** The Government have proposed to cap ground rent at £10 per annum. Do you support that?

Anthony Essien: I was a little surprised, I have to say. The information before that had been all around a peppercorn. I thought that if the Government were going to do that, it would be a rare thing, but they have decided to go with this nominal value of a ground rent at £10. One imagines that, over time—this is something we said in our response to the "Tackling unfair practices in the leasehold market" consultation—again in the social sector, where they have this £10 ground rent, it is going to get uneconomic for anyone to collect it at all, so, in a way, what is the point? Also, as many have said before, you can extend your lease now on a statutory basis and it becomes a peppercorn. Why have them?

Q313 **Teresa Pearce:** You have called on the Government to legislate for a maximum ground rent, but where someone is in an existing contract, do you think that the legislation could retrospectively amend onerous leasehold terms?

Anthony Essien: I recognise that there are some real legal challenges with retrospective legislation. However, in our submission to you, which I hope you found helpful, we did talk about examples where, in not quite the same circumstances, the Government have intervened, where perhaps a public purchase of property or using a public scheme—in that case the Right to Buy, but in this case perhaps Help to Buy—is an example of a public acquisition scheme where the Government have intervened. In that case, in 1984, it was around defects in housing, and a scheme was developed there where they paid either for 95% of the redemption works to the property to put these defective properties right, or 95% of the non-defect price of the property. It assisted a number of people who were in very difficult circumstances through no fault of their own, which has a certain symmetry with where leaseholders of these onerous ground rents are today. They are in a position where it is not their fault.

Q314 **Chair:** What you are saying is that a ground rent is onerous because it goes over 0.1%. That is what you are saying is onerous by your definition.

Anthony Essien: Alongside regular increases.

Chair: Alongside regular increases. Could you explain a bit further? I was not quite sure.

Anthony Essien: Anything above 0.1%—let us take the £500,000 in London—is likely to be onerous. If that is also attached to a regular review of ground rent—let us say every five or 10 years, or for shorter periods of time—it is going to become particularly onerous.

Q315 **Chair:** We have just had a new definition of "particularly onerous," which certainly is beginning to confuse me even more. Is a ground rent of more than 0.1% onerous per se?

Anthony Essien: Yes.

Q316 **Chair:** Even if it is not attached to any increases. If it is at that level, more than 0.1%, it is onerous.

Anthony Essien: I would say so, yes.

Q317 **Chair:** That is a clear view from your organisation, is it?

Anthony Essien: Yes.

Q318 **Chair:** If it is then attached to increases beyond that level, it is even more onerous.

Anthony Essien: It is punishing indeed, yes.

Chair: Punishing? Right, okay. We have not heard that one before. That is a new definition: punishing. They should say if that is what the arrangement is, because you cannot retrospectively change them. Is that the view of your organisation?

Anthony Essien: No. That is a matter for the Government, of course. It is policy for the Government to decide on what they should do.

Q319 **Chair:** What would you advise the Government to do?

Anthony Essien: If the developers and the owners of these onerous ground rents do not intervene, as I have said in our submission to you, the Government should intervene.

Q320 **Chair:** Is that even on existing leases?

Anthony Essien: Yes. That is where there is a particular problem. A lot of the reforms that have been put forward, including the work that the Law Commission is doing, is prospective. If you are a new lessee in that position with ground rents of that kind, you are going to be assisted. If you are an existing lessee, you do not appear to be assisted by what is proposed, as I said in our submission to you. That is why there is an argument for Government intervention.

Chair: It is helpful to clarify that.

Q321 **Helen Hayes:** We have received evidence from quite a lot of leaseholders that they feel their homes were mis-sold to them, either because there were hidden, onerous charges or false assurances of purchasing the freehold at an agreed price. Do you agree that that is a fair statement for those leaseholders to make?

Anthony Essien: A lot of lessees have suffered; there is no doubt about it. There is an example, particularly from an article in the *Law Society Gazette* in October, where a firm of solicitors was assisting 500 leaseholders involved in issues concerning poor advice on the purchase of their leasehold properties. That suggests to me that there is a significant group of people who are definitely suffering detriment because of the situation they have found themselves in, again through no fault of their own.

Q322 **Helen Hayes:** Do you think there should be a compensation scheme for leaseholders who are affected by mis-selling in one way or another?

Anthony Essien: That is certainly in the mix, in terms of some sort of proportionate action by Government to address this position. One also has to bear in mind the wider work that is going on, also by the Law Commission, on changing the valuation approach to enfranchisement; it has put some options together. A proportionate consideration of that kind of thing, plus the wider work that is going on, is definitely part of the mix that should be considered at the moment.

Q323 **Helen Hayes:** We have received some pretty damning criticism of LEASE itself and the services that leaseholders receive from your organisation. One witness reported that the support they received from LEASE was "honestly, quite appalling". Are you satisfied with the level of service that your organisation provides to leaseholders?

Anthony Essien: If anybody says that they are dissatisfied with the service, first and foremost, obviously that is something that would concern me gravely. In terms of what we do, no one in my position would say they are always satisfied with what they do. What we try to do is give the best service we can within our remit. Part of the difficulty, for us, is that we are an initial advice provider; we do not do casework. Therefore, the kinds of problems that are arising and coming to us sometimes require additional assistance—casework, beyond just initial advice.

What we want to do going forward, because we recognise that sort of limitation, is work with other advice providers and help grow their capacity, particularly where those advice providers do casework. That does not help anybody. What tends to happen is that they get a technical issue around residential leasehold and they send it to us. Ultimately, we advise and somebody needs more and we send them back, perhaps to a casework provider. That does not help anybody.

What we would like to do is grow their capacity, and we have had some discussion about working together with Citizens Advice, for example. We have done some training more recently with a leaseholder representative body called the HomeOwners Alliance, because we recognise that we have some technical knowledge and information that could benefit the wider sector, certainly. We want to grow that capacity so that people have much more help than is available at the moment, and that goes beyond what we are able to provide them.

Q324 **Helen Hayes:** LEASE is the only organisation funded by the Government to provide advice to leaseholders, and certainly at least some of the evidence that we have received is from leaseholders who think there is a problem with that monopoly provision. One of them told us, "LEASE has been a monopoly service for far too long and it has done huge damage to the sector". Do you think that the funding you receive as an organisation should be distributed across a range of organisations that support leaseholders, so that leaseholders have a choice about where to go for independent advice?

Anthony Essien: That is a matter for Government completely and what they decide to do. We are open to work with everyone in the sector, whoever funds them or not, as the case may be. As I mentioned a moment ago, we want to grow the capacity of other advice providers, whether they are funded by Government or not. We want to help them to help leaseholders. We are pushing, I hope, in the same direction, to be progressive about reform and to help people's lives, et cetera. We do not want to sit back and see people suffering in that way.

We have had a robust meeting with the all-party parliamentary group and the Leasehold Knowledge Partnership, where they expressed their views about what we are doing. We know them and I want to meet with them again, on a regular basis, so that we can progress our relationship with them and look at how we can improve things for leaseholders. Katie Kendrick, who you may have had evidence from, from the National Leasehold Campaign, was kind enough, at the last APPG meeting, to say that she was willing to meet me again in the new year to discuss the service, reform and what LEASE can do to help people.

We want to help leaseholders, first and foremost, but of course we want to do that through other providers too, if necessary. Ultimately, who funds services is a matter for Government; it is not something that I can have any control over.

Q325 **Helen Hayes:** In relation to your governance, there are no leaseholders or representatives of leaseholders on your board. Why is that the case?

Anthony Essien: Those are public appointments that are certainly outside my control or my board members' control. All I would say is that I am more than happy, and have always been happy, to work with any board member we have. Whether there are board members who are lessees on our board or not, going forward, following a public appointments process, meeting with the APPG on a regular basis—I have written to the APPG recently asking for another meeting and given them some dates—and LKP on a regular basis and other advice providers will help me feed back the views of leaseholders to our board, to make sure that we are bearing them in mind, if that is the concern, when we provide our services.

Q326 **Helen Hayes:** Some witnesses have also argued that LEASE was very slow to raise concerns with the Government around onerous ground rents, when that issue came to light, and other unfair leasehold terms, and that it was other campaigning organisations that did the most to bring that to public attention and to support leaseholders who were experiencing those issues. When did LEASE first raise these concerns with Government?

Anthony Essien: Do you mean about onerous ground rents and other issues?

Helen Hayes: Yes.

Anthony Essien: Certainly it was after it had been done by LPK and other bodies. Our focus has been on the provision of advice. We recognise that we could do more with our data. Again, looking ahead—and it is something we have touched on briefly in meetings with the APPG—the idea is to use that data and publish it, to inform Government and the wider sector about trends and anomalies going forward. We have a lot of data; it is a matter of organising it and publishing it to assist the wider public. That is something that we have tended not do in the past, but data is something that can benefit people when made very transparent, and we want to do that.

Q327 **Mr Dhesi:** LEASE has definitely had very mixed reviews in the evidence that we have received about your performance. I can give you another one of the quotes in addition to what Helen has just said. There is a "huge credibility problem with LEASE among leaseholders", with a feeling that LEASE were, in effect, working against them. What do you think is going wrong and how can you help to address that?

Anthony Essien: That is very concerning indeed. In part, if we look at our recent past and even at the way our framework document is framed at the moment, until February 2017 our role was to advise everybody in the sector. That is lessees, landlords and tenants, more particularly, as the framework document describes them. That is what we did, because that was the task we had. Since then we have not done pieces on leaseholders and, I should add, park home owners and we have removed the commercial services that we provided at that time. We were doing commercial work and were funded by professionals for free advice services. That is at an end. Our focus is now completely on leaseholders. What we hope to do, as some of the things I have discussed, is build in the capacity of others and work with other advice providers.

Q328 **Mr Dhesi:** I can give you something else from the National Leasehold Campaign. There were several written submissions highlighting where you had held past conferences, hosted for freeholders, which "included seminars on how to draft leases to maximise the income for freeholders". That is in direct opposition and contrary to what LEASE should be all about, which is in the interests of leaseholders in particular. How would you counter that?

Anthony Essien: We have had a number of conferences since 2003, the first being about common hold—promoting that and making sure it works. When it comes to the example you are highlighting there, it is very regrettable indeed that a speaker at our event would say something like that. It does not reflect, in any way, the nature of our service and what we are trying to achieve for leaseholders. We have had conferences where we are trying to inform, advise and, we thought and consistently felt, provide examples of improvement for the sector. We have had speakers who are not just from the landlord side of the table, as it were. We have been fortunate to have Sir Peter Bottomley speak at our conference a couple of times. We have had one of the trustees from the Leasehold Knowledge Partnership, Professor James Driscoll, speak at our conference on a number of occasions. The chairman of the Federation of Private Residents' Associations has been at our conference, among others. Remarkable leaseholder campaigner Nigel Wilkins has spoken at our conference in the past as well. Those who were there from the professional landlord side have seen and heard views from other people as well in the past. It is an important part of the exercise we have done.

Looking forward now, what we want to do and focus on, like this Committee and a lot of the progressive people in the sector, is to improve things, definitely. We have tried to promote some of the Law Commission's recent London events, when it comes to its very large consultation exercise, and those events have been well attended. There have been some remarkable comments made that the Law Commission was appreciative of. Our colleagues have received something like 30 or more WOW! awards during the year. A colleague recently won a customer commitment award at what they call the WOW! awards, which is for the public to comment on our service. Almost 2,000 customer surveys have come back to us and the results of those are encouraging. We definitely have work to do to re-establish that trust, because we live and die on the public believing in what we are trying to do. I hope that working with the APPG, looking to work with LKP, the National Leasehold Campaign and other bodies helps to build that, but we realise that we have things to do and we are going to keep trying. We are certainly not perfect.

Q329 **Chair:** Do you think your role has changed from being a recipient of complaints to a champion for change?

Anthony Essien: There is no doubt about it: the environment cannot support an advice service that just advises technically. We have to do more. We have to get our data out there, help spot anomalies and so on, as well as be the champion for leaseholders.

Q330 **Chair:** Have you brought in new staff to do that?

Anthony Essien: We do not have new staff to do that, no.

Q331 **Chair:** How are you going to change then?

Anthony Essien: Our advisers have always had the view that they are there to help those who come to seek help from them. The number of outreach sessions and inquiries they do is over 18,000.

Q332 **Chair:** You just said that you need to change as an organisation, so that is not doing the same thing; it is changing what you do.

Anthony Essien: I do not think that our outlook on helping people needs to change; it is about how we do it. There are perhaps different things that we can do. For example, the publication of information on the anomalies and trends that we see in the data is one of the things that we could do differently. Our core group of advisers has always been there to help people as best they can.

Q333 **Chair:** This comes back to the point about you not being at the forefront of drawing to the attention of the Government the significant problems that need addressing. Do you see that changing in the future, so you will be more proactive in going to the Government and saying, "This is not working and needs to be altered"?

Anthony Essien: Yes, we have responded to consultation papers in the past. We have been on working groups for Government and others to support progress, but perhaps we need to look at exactly how we put across to Government the changes that the sector needs. I do not want to barrack you with this point about data, but a lot of that comes from the evidence base that we have to point these things out and be very public about them.

Q334 **Chair:** As far as you are concerned, your only role is to be on the side of leaseholders.

Anthony Essien: Yes, there is no commercial work. We are here to help leaseholders and park home owners. We have wider stakeholders, of course, and we try to get across to them what leaseholders are seeing. We want to do more of that going forward.

Chair: Thank you very much for coming to give evidence to the Committee this afternoon.

Examination of witnesses

Witnesses: Jonathan Smithers and Beth Rudolph.

Q335 **Chair:** Good afternoon and thank you for coming to give evidence to the Committee this afternoon. Could I ask for your names and the organisations you represent, please?

Jonathan Smithers: I am Jonathan Smithers, giving evidence on behalf of the Law Society of England and Wales.

Beth Rudolf: I am Beth Rudolf from the Conveyancing Association. We are a trade association with about 75 members, which does about 30% of all transactions in England and Wales. We are set up to improve the home-moving process for the consumer.

Q336 **Liz Twist:** We know that developers incentivise leaseholders to use their preferred conveyancing solicitors through offers of discounts, gifts, carpets or lawns. Where conveyancing solicitors rely on repeat business from developers, can they ever offer truly independent advice to prospective purchasers?

Beth Rudolf: The regulations for conveyancers are very clear that you cannot accept referrals from any introducer if they would impact your independence or create a conflict of interest. Any conveyancer who is taking on work has to review how much work they are taking and how much of a percentage of their own caseload that takes up, so that they are not in a position in which their independence is impacted. I hope that people coming into the conveyancing industry meet those ethical standards in all cases.

Jonathan Smithers: I am happy to agree. Regulation overlays the profession very strongly in this regard. The payment of referral fees is heavily regulated. It has been a controversial area for some but, where there is transparency, the buyer of those services can make a decision based on the referral fees. The ethical consideration for the lawyer will be principal at any point, so it is perfectly possible for the solicitor who has a commercial relationship still to give that independent advice. The evidence would show that.

Q337 **Liz Twist:** The evidence that we have had from some leaseholders—we are talking mainly of houses now—have referred to gaps in information given to them about leasehold terms or being pushed towards particular solicitors to complete quickly. We have had a number of people give evidence to us in writing, at our roundtable and in one of our evidence sessions, who said they feel they lost out because of that link between the developer and the solicitors. What do you say to the people who have raised those concerns to us? There are plenty of them.

Beth Rudolf: That is very concerning. You want anybody going to a conveyancer to receive independent advice. The big problem here is that sometimes the advice gets lost in everything else going on. There are some real concerns about the timescales placed on buyers from developers to exchange contracts in a short period of time.

I am glad that you have raised the point, because it makes sense of the fact that I have carried this lot all the way down from Herefordshire. This is the paperwork that I received when I purchased my property. Mine was not even leasehold and you can see all the paperwork that you get from your conveyancing solicitor advising you of all of the things that you may or may not need to know. The problem is that, by the time the buyer gets this, with 14 days to exchange contracts or lose their deposits or lose their incentives, they are not in a position to absorb any of it. The time they should have been told was the point when they viewed the property.

The Consumer Protection from Unfair Trading Regulations state that anybody marketing a property has to reveal anything that would materially affect a buyer's decision-making process. If there is a doubling in ground rent or if it is leasehold and they think it is freehold, they should be advised of that at the site office or by the estate agents. They can then make a decision about how much that property is therefore worth to them. Otherwise, how can they decide what their offer should be if they do not have all those material facts? That is what those regulations are all about.

By the time the poor buyer gets hold of all of this, they have already fallen in love with the property. They have already worked out where their sofa is going to go and where the kids will go to school. They are in no position to absorb all of this and then make an unemotional decision about whether to continue to proceed, at a point when they are properly committed financially, after paying for searches, surveys, mortgage product fees—probably as much as £1,200. Their decision is about whether they lose that £1,200 and pull out from the house that they want to buy, which is in the place where they want to buy, and may well be the only type of property available to them, if they are looking for Help to Buy schemes. Would they prefer to give that up or take on perhaps a doubling ground rent, which might be £1,000 in 40 years' time, when they do not intend to live there anyway? Unless they have this information before they view the property, how can they make a decision anyway?

Jonathan Smithers: I agree with everything that Beth has said. There is an imbalance between the developer and the buyer, and that partly depends on market conditions. When the market is rising, the developer can simply sell to someone else. The buyer is desperate to get on the ladder and will make decisions that they might regret later. It is important to distinguish those where buyers may regret later, when things do not turn out quite as they expected, from those where they were perhaps not given advice, for a number of reasons. I know from 30-odd years of practice that it can be difficult to judge how much information the buyer, your client, can absorb.

Bear in mind that Beth is referring to a freehold; for a leasehold, it could be much bigger. For a brand new development, it could be an A4 lever-arch file. Can you assimilate that information to work out what the buyer needs to know on which they can make their purchasing decisions when often, exactly as Beth says, they have mentally moved in already and are saying, "I am going to lose the place. Just sign on the dotted line now."

Liz Twist: That is the emotional bit, isn't it?

Jonathan Smithers: Absolutely, and, from a professional context it is quite hard. It is not for the solicitor to say, "You should bite," or "You should not bite." You say what the parameters are and that it is up to them to make that decision.

Q338 **Liz Twist:** I get the bit about the developer's responsibility and the salesperson's responsibility. That is not part of this inquiry, really, but we know there are issues sometimes. Is it not the job of the solicitor they employ to make sure that people are aware of significant terms, whether or not they were pointed out when the plot was advertised or the property was sold through the marketing suite? Is it not the solicitor's responsibility to get that right?

Jonathan Smithers: Yes, it is and for the client to understand those terms, but from personal experience I recall saying to a client, "The ground rent will go up by this much in 10 years," and the client saying, "I will not live there in 10 years." Things change. Mortgage lenders can change their criteria, so something that might have been acceptable 20 years ago is no longer acceptable now. Societal things change as well, and it is very hard to balance those. We absolutely accept that challenge when acting for someone professionally, but you try to give them that information in the most digestible form, so they can make that buying decision.

It is made harder, exactly as Beth said, because they often do not have that right at the beginning. They will be told the price of the leasehold property they want to buy is £100,000 and the ground rent is £100. What they do not necessarily understand is that the ground rent may go up or indeed the level of discount that ought to be against the premium if the ground rent is higher—so if the ground rent is £1,000, you should be paying £95,000 or whatever that is—and how sophisticated the valuation should be for that and what discount there may be.

Again, as I said before, it is affected by supply and demand. The developer often has the whip hand in that, where there is a rising market and the buyer just wants to get on the ladder. They say, "If I miss this ladder, I will not be able to get back on again, if I miss this opportunity." That is the practical difficulty of it.

Q339 **Liz Twist:** I want to make that point that we have heard from a number of people. Both of you have talked about people moving in 10 years' time, but actually people are saying to us, "We can't move because we cannot now get a mortgage on our property and we are trapped in this leasehold property." I just wanted to make that point. Should developers be prohibited from recommending specific solicitors or conveyancers? Would that not be a much clearer separation of responsibility?

Jonathan Smithers: That is problematic. Again I suspect that we strongly agree. If you are acting for a client on a new development, you may get a massive amount of information to digest. If it is a large development, the site may have been made up of five, 10, 15 or 20 different titles, all of which you have to look through. There are road agreements, planning agreements and so on to familiarise yourself with. If you are doing that and everyone is doing that, again and again, you are reinventing the wheel. It is very helpful for a buyer to have an independent firm—and it may be one of a panel that developers recommend, which has had the time to go through all that, so they do not have to keep on doing it every time. It can be to the buyer's real advantage.

The buyer's solicitor will also have dealt with the developer's solicitors, in-house legal department or marketing people, and will know where the touch points are. They will know how the developer is progressing and what the developer will and will not negotiate, and can advise the client better. The important thing is that the buyer has the ability to have independence of choice, so the developer does not say, "I will only accept your offer if you go with this conveyancer". For me, the important thing is that the buyer has real choice if they want it, but there can be significant advantages otherwise.

Q340 **Liz Twist:** How can it be that so many people are telling us that they were not aware of the conditions of the leasehold? It is not one or two cases; there are a number of them.

Jonathan Smithers: It is hard to extrapolate. You hear complaints. There were 1.2 million purchases last year and, of that, there are a certain number that will be freehold and maybe some will be leasehold. It is hard to extrapolate the number of complaints you have as opposed to the total number there are. Clearly one complaint is one too many, but I have personally come across cases of buyers' regret later. When people do regret, they are trapped in a property for all sorts of reasons. That might be negative equity. I recall being trapped in a property myself, in 1991, because of negative equity after the economy crashed. There can be lots of reasons why buyers wish they had not done something later, but having all that information in the best and most transparent method available is what the conveyancer is aiming towards.

Q341 **Liz Twist:** Ms Rudolf, I did not ask you whether there should be a ban on recommending specific solicitors.

Beth Rudolf: As Jonathan describes, where you have the opportunity to review the paperwork first, ask questions and deal with additional inquiries, it can be extremely helpful. Clearly, what you are describing are situations where the balance of power has shifted and people have almost been forced to use that conveyancer. That cannot be right and it is certainly not supposed to happen. There are regulations that say that people should not be told, "You can only put this offer forward if you use our conveyancer." There should not be a position where somebody's independence is impacted or where there may be a conflict of interest.

I did a review knowing that I was coming today. I asked the Guild of Professional Estate Agents to ask their council members what they thought about bans, and only one in six of the responses I had said that there should be bans. They were more concerned about referral fees—not just about them being paid, but about unreasonable referral fees. They felt that a referral fee was okay if there was a control in there and it was transparent, but they had certainly heard of ones that were unreasonable and felt that that might twist independence.

I only raise that because I note that you are not having any estate agents or indeed lenders to give evidence. I wonder if that is something you might want to look at around this point and understanding how it works. From the lender's perspective, as Jonathan has touched on, we have a problem with onerous terms, what become onerous terms, how they decide what an onerous term is and how we, as conveyancers, could almost pre-empt that.

Jonathan Smithers: Could I add something on the cost of conveyancing? The consumer lobby has for many years now, because of competition in the profession, driven down the cost of conveyancing fees quite significantly, certainly against inflation over the years. Acting for a client has a cost. The time you spend looking at the documentation has a cost. If there were no such arrangements, the cost of conveyancing would undoubtedly go up, because each firm would have to redo all that work each time. There is a real cost benefit to the consumer in doing that, quite apart from the referral fees that might be paid, which is perhaps a slightly separate issue.

Q342 **Liz Twist:** On the question of referral fees, is it ethical, never mind reasonable, for referral fees to be paid by solicitors to developers for getting that repeat business? Is that not questionable?

Beth Rudolf: It is a balance, is it not? If those referral fees are transparent, if it is explained to the buyer that they are paid and they understand that there is a commercial arrangement between a conveyancer and a developer, that is one thing. Otherwise, conveyancers would be getting their work through marketing activities and things like that, which cost money. Where the referral fees are reasonable and at a sensible price that does not impact service, for example, it is possible they can work well simply because, as Jonathan describes, you get a volume of work coming through and you have already checked to make sure they are okay. The cost of the referral is the same as you would have paid on a marketing billboard outside the development saying, "Come to us."

There is a balance there, but we find cases where there is a perversion, where the buyer has not been advised and it has not been as transparent. I know the Ministry is looking at that and looking to bring in more transparency rules for anybody marketing or receiving a referral fee, which has to be a good thing. Again, our regulations stringently set out what exactly we have to state and when we have to state it for any referral fee paid.

Jonathan Smithers: I agree that it is heavily regulated. If the regulator is enforcing those regulations, there should not be market abuse. The payment of referral fees has been a controversial subject for more than 20 years, and it is much wider than an inquiry just on leases or new builds, because payment of referral fees across the spectrum of buying and selling has been an issue about the visibility of independence, regardless of whether it actually affects independence. As Beth said, for some it is simply morphing from buying the estate agent a bottle of Scotch at Christmas, or pay a referral fee instead—what is the difference between the two? If it is regulated, it is transparent and the client can make a transparent buying decision.

Q343 **Liz Twist:** The perception from some of our witnesses is that it is all part of a system set up to not make it transparent to them. Is it not time to abolish all of these things and be absolutely crystal-clear?

Jonathan Smithers: That is a matter for others. There is a strong body of opinion that would welcome that, but there are others in the market who say there is a bargain between the buyers and sellers, and it is a matter for the market to sort that out. As long as it is regulated and transparent, the market ought to decide and you do not want to drive things underground and upset the business systems that enable volume firms to produce cheaper conveyancing that can benefit consumers. There are some subtleties in the argument.

Beth Rudolf: I agree but, to be fair to referral panels across the market, not just this sector where we are looking at abuses of leasehold, that is a whole different thing. I saw the evidence given by Taylor Wimpey, and they put their hands up that things had not happened in the way they had wanted. There is always going to be a bad apple and that feels like a bad apple. Across the whole industry are instances of where referral fees help. That means you can have volume conveyancing that can reduce cost, simply because it is volume conveyancing. In some cases, you have panel managers who will help the consumer and make sure that the service levels are adhered to and that information is collated as quickly as possible.

Liz Twist: The people we heard from were clearly suspicious.

Jonathan Smithers: It creates suspicion.

Q344 **Mr Dhesi:** Ms Rudolf, you alluded earlier to a bad apple. There are many out there who are saying that the relationship between conveyancing solicitors and developers is more like a cartel in operation. That is why they are unhappy. I will give you two or three examples to highlight the point. One individual who gave written evidence said that the developer "pushed me to use their recommended solicitor by offering £500 towards legal fees and threatened that the sale would fall through if I didn't complete within 28 days", and the solicitors in question were "the only solicitors they could be sure would hit this deadline… I was not advised the lease may impact the saleability of my home".

Another individual said, "I was told we needed to complete quickly and that we must use their recommended solicitor. This solicitor never warned us about permission fee to remortgage, build a conservatory and even change the colour of our front door", et cetera. In order to entice those individuals to use those conveyancing solicitors, they were told that if they "use their panel solicitors, they would get free carpets, free lawn in the back gardens and stuff like that". You can see this is not quite a rosy picture. Do you think that is morally wrong and unethical? If so, what are your good selves going to be doing to remedy that situation?

Beth Rudolf: I am not here to defend developers. That all sounds very wrong if people are being coerced into doing something that is not in their best interests. As we have said, as conveyancers we are heavily regulated and we should not be accepting instructions from clients where they have been acquired through something that is in breach of our regulations. If any conveyancer was aware of that, they should have refused the instruction. I do not know the individual circumstances.

One thing that was also touched on in one of those submissions was a big area of concern, which is permission fees. This is tricky for a variety of reasons. One is because it is open to abuse, but also because conveyancers have no way of establishing what those fees might be at the beginning of the transaction. I work on the leasehold property enquiries form. I am the co-ordinator for the group, in which the Law Society, ARMA and the whole sector are involved. One of the changes that we are looking to make is to include a request for lease administrators and freehold management administrators to set out their fees for those services. We are finding that we are not being given that information and it is not information that is necessarily relevant at the point of purchase, because it is something they might do eventually. Therefore, it comes as a big shock. The problem is that those are not regulated. That means that, even if we are told that permission fees or notice fees within the lease are £25, by the time the property is sold or they come to extend or alter, those fees have gone up astronomically. There is no good reason for it.

We have so much data where we hear that, for example, a notice of assignment, which takes about a quarter of an hour to be dealt with according to lease administrators themselves, is being charged at £270 just to acknowledge notice. There is nothing that we can do because, if the buyer wants to buy that property, they will have to pay that £270. This is not just with new builds, but with all leases. We reckon that these fees should be no more than £25, but this is not being addressed. Unless there is some form of tariff, cap or hourly rate set, this abuse will continue.

We are seeing that not only are the bad adding more costs to it, but they are also inventing new requirements. Now, you do not just have to serve notice that the property has changed hands; you also have to serve notice of a mortgage on a property and that the previous mortgage has been redeemed. At £270 a pop that massively adds up. The point that I am trying to make is that these onerous clauses, leases and terms do not get there by accident; they are put there by whoever wrote that lease to start with. The developer has set out to do that, and then the management company and the managing agent continue to make these excessive charges. We need to look at sorting that out, so the onerous clauses are not there to be explained to a buyer by either the estate agent or the conveyancer. They should not be there in the first place.

Q345 **Mr Dhesi:** Mr Smithers, what do you think about the alleged tie-up between conveyancing solicitors and developers?

Jonathan Smithers: Can I go back to the question you asked? There were two separate things. There is the potential allegation of negligence, where the licensed conveyancer or solicitor did not explain to the individual. That is one thing. There is plenty of redress mechanism if that is the case.

The second is about what may happen in the sales suite between the buyer and the agent or the developer's agent, and the promises that may or may not have been made. I know from personal experience that the conveyancer will have absolutely no knowledge of what arm-twisting there might be to get someone to make an offer and do something quickly or the incentives. It is a bit like buying a second-hand car—you offer to put in the mud flaps or whatever it might be. Those sorts of things certainly go on, and the salespeople will often be incentivised by commission, so they will be paid when something goes through. They have every incentive to twist the buyer's arm to do something and use the conveyancer they know has looked at the papers before. There is an imbalance of power at that point between the developer and the buyer, but there always is because of the supply and demand nature of this.

From years of experience, when the market is very poor in recessionary times, it is the other way round and the buyer will want more conditions. They will say, "I will accept this, but only if you put the carpets and curtains in and do not charge me any more." The developer will not be keen to press the particular solicitor, because they will want any buyer to make any offer at all. That will change with the economy.

To answer your broader question, those relationships can benefit the consumer, but I accept that there is a visibility problem. Buyers will think that they may be at some disadvantage, whereas in fact it is a matter of the market and possibly buyer's regret at a later point. There is an inability sometimes to take on board the huge amount of information, as we have referred to previously, particularly for leasehold property and particularly for buyers who may be lower down the housing ladder. They may be first-time buyers who do not have any experience at all. If you tell them these things, they do not understand what the ramifications are, and that is a professional problem. People will sometimes come and say those things later on.

Q346 **Mr Dhesi:** There are individuals who have been told that they must—the word was "must"—use the recommended solicitor. It just seems very weird, to say the least, that developers think that that particular conveyancing solicitor is the one that should be used. Why is that?

Jonathan Smithers: It is absolutely wrong. They should not do that. The buyer ought to be able to have freedom of choice in doing that. The developer is doing it because they want the buyer to use someone who they know has looked at the documentation and will be able to go more quickly. If you have a mass of documentation and 100 clients, you will not have the time to do that. It might take you a week, or two or three, to get it through and the developer wants to sell quickly. The developer has every incentive and the developer is not regulated, so they can say those things and no one will know, behind closed doors, what has been said. The conveyancer will not know that; they are not part of that negotiation. It absolutely is an abuse, but it is an abuse in a part of the market that is unregulated.

Q347 **Chair:** Ms Rudolf, you referred to referral fees being reasonable. What does that mean? What is the figure?

Beth Rudolf: It depends on the amount being paid. When I was in practice, we would see referral fees at £100 out of a £1,000 conveyancing transaction. We could still provide a very good service.

Q348 **Chair:** Is that reasonable?

Beth Rudolf: What is not reasonable is where they are being charged £600 out of £1,000.

Q349 **Chair:** But £100 is reasonable.

Beth Rudolf: Yes.

Jonathan Smithers: I think the Law Society has a specific policy on that. I personally think it is a bit high. What would be a reasonable amount that you would spend on marketing to acquire that client? It would not necessarily be 10% of the total fee.

Q350 **Chair:** You both referred to the benefits from having a solicitor or conveyancer who knows that type of property and does not have to be in from scratch. Surely that can be achieved by having a panel of recommended solicitors and conveyancers, without any referral fees.

Jonathan Smithers: Absolutely it can.

Beth Rudolf: Yes, absolutely.

Q351 **Chair:** Why is there a need for them?

Beth Rudolf: Ask the people who are asking for the referral fees. There are a lot of conveyancers out there. A lot of our members, after 2007-08, said that they are not taking referred work anymore. They just have direct work that comes to them.

Q352 **Chair:** There is not really a need for them, is there?

Jonathan Smithers: Some members will say that it is part of their business model. If they want volume transactions, with the benefits that can have for their business and, they would say, for their clients, you have to have a larger number of transactions. The way to get that is effectively to buy them in, as opposed to what others refer to as high street competition.

Q353 **Chair:** If you are on a panel, what does it matter?

Jonathan Smithers: It does not if you are on a panel, but to scale up your firm and have a number of conveyancers and the background to process a large number of transactions, you need to invest in your firm.

Q354 **Chair:** You are not convinced by that, are you?

Jonathan Smithers: It is not the Law Society policy. I am talking about my years of practice; that is the argument that firms put forward for that. It is a method to ensure that they have sufficient resources to process the number of transactions. There are 10,000 firms of solicitors in England and Wales, and about 5,000 or 6,000 do conveyancing. Of those, a relatively small number do the vast number of it, but the majority is done on the high street in relatively small business units, and done very well and efficiently. The volume end of the market is a relatively small percentage.

Q355 **Helen Hayes:** The Committee has seen evidence of firms of solicitors, along with developers, having joint Christmas parties and circulating the evidence of that on social media. Would you accept that, notwithstanding any regulation, in certain quarters the system has become completely rotten and leaseholders are absolutely right to be very concerned by such practices and the lack of awareness that underpins such an action? There is no understanding of perception of conflict of interest, still less an actual conflict, which may result from those circumstances in that example.

Jonathan Smithers: I would accept that perception is very important. I would not necessarily describe going to a Christmas party as evidence of something being rotten. One is dealing with counterparts on a daily basis. I practised in Tunbridge Wells for many years. I knew all the people on the other side of the transaction, whether I was acting for a buyer or a seller. I spoke to them on many days and we would meet at other social functions. That did not in any way inhibit my independence or my ability to argue my client's case or take points. I do not think you can necessarily extrapolate one from another, but I accept your point about visibility in those circumstances.

There is, however, a benefit for the client in ensuring that the person who is acting for them has a relationship with the person on the other side and understands them psychologically. That may bring benefits, so there is an element of trust between the two. If the buyer's conveyancer says to the developer's conveyancer, "Look, you know me. I am telling you this is the client's position," they are more likely to believe them, so there may be some other benefits to it.

Q356 **Helen Hayes:** We touched on the issue of some leaseholders not being fully aware of the terms of their lease. There are different ways in which solicitors can behave under current rules. There is one form of advice that says, "Here is the set of papers. These are all completely routine and standard documents and this is, broadly speaking, what they mean, but they are all a standard part of the purchase of the property you want." There is another form of advice that says, "Under this clause, you could potentially end up with very high levels of cost. Are you absolutely confident, in undertaking this consultation, that you are aware of this clause and you are prepared, in the future, for the possibility of this arising?"

I ask in that context about the two different types of having exactly the same conversation. The conversation is, "I am your solicitor; I am briefing you on the papers you need to sign to purchase this property and discharging my duty in doing so." There are different ways of having that conversation. What needs to change to ensure that each and every leaseholder is fully aware of the terms of their lease and the implications that could arise for them financially?

Jonathan Smithers: It is a difficult question to answer, because to some extent one is doing it in hindsight when something goes wrong. I have had many clients come to me through the years who say, "I'm going to buy this property. I know you are going to tell me that I should not and that there are all sorts of things wrong with it, but it is the house I have set my heart on"—or whatever—"I just want to sign on the dotted line." Actually, the challenge for the conveyancer is to give that information to the client and say, "Have you read it? Do you understand? These are the terms of the lease and the important things." The client just says, "Yes, I will sign there and then," and may not later on.

It is very hard to do that and to gauge the level of sophistication of clients. Some clients are very sophisticated; others are not. They have not bought and sold before. It is hard to judge the risk there might be in one, two, three, five or 10 years' time as well. That is part of the professional relationship one has and other professionals, whether accountants or doctors, have with their clients or patients to try to judge that. Clearly, going back to what we were talking about and a new-build situation—the better the information the buyer has when the offer and acceptance takes place, in the sales office, the estate agent's office or wherever it might be, the better informed they will be later when they go through the legal process, if is already embedded in their mind.

Q357 **Helen Hayes:** Would it help if there was a requirement to inform potential purchasers of the average amount that leaseholders in their type of property have been charged over a past period and the range of those charges? Putting a figure in front of people at the point of sale might help them to realise the implications there might be in the future.

Jonathan Smithers: It absolutely would do, but it needs to be accompanied by enforcement. In a sector that has light-touch regulation or is not wholly regulated, the necessity for trading standards or someone else to enforce those and take cases where that does not happen is important. If that does not happen, when there are over 1 million transactions a year—regulation may be great but only if it is enforced—the industry will probably not pick it up, on previous evidence.

Beth Rudolf: The idea of upfront information is key, not just to solving this problem but to a lot of the difficulties in the home-moving process at the moment. Currently, when somebody puts their house on the market, they wait for a buyer to come along. Hopefully their estate agent will have filled in a disclosure of information form that captures that. Whether that is put in front of the buyer or not, we just do not know. There are good or bad agents. Some will put down what the service charge and ground rent are, and whether there is a rent review.

The problem is that when a buyer is found there is an immediate scrabble around to try to get all of the information related to the property completed. The Law Society forms then need to be filled in, which duplicate 51 questions that have already been asked, but the conveyancer acting for the buyer does not know what that information has revealed at the point at which the property went on the market. You then get searches that come through from the relevant data authority, which may conflict with the information that the seller has given you. On top of that, the valuer goes out and comes back with information that may also conflict with what has gone before. For the poor buyer to work out who to believe is virtually impossible.

Something where all that information is available and set out in a "what that means to you" way, as you describe, would make a huge difference. People could then make an informed choice before they put their offer in, understanding what it means to them now. The difficulty, certainly with leased houses, is that it is such a complex area of law. Try to wrap your head around the fact that the Royal Institution of Chartered Surveyors said, 20 years ago, that marriage value kicked in at 70 years, and that that has now changed to being 80 years, and lenders now say that they need a lease to be 85 years. How on earth is a leaseholder going to understand the impact on them, when it comes to considering whether the lease is going to be short or not?

Q358 **Helen Hayes:** On the question of redress for leaseholders who believe they have been let down by their conveyancing solicitor, would you support a dedicated alternative dispute resolution scheme for leaseholders who have claims against their solicitor for failing to inform them of escalating ground rents and other punitive clauses?

Beth Rudolf: We already have the Legal Ombudsman, so I would hope they are able to go there. We have our regulators as well.

Q359 **Helen Hayes:** You do not think the extent of concern and volume of cases around leasehold that have arisen in recent years amount to an argument for a separate and bespoke route for those clients to seek redress?

Jonathan Smithers: I have not seen any evidence that would suggest that a separate redress scheme would be better than the existing redress scheme. The Legal Ombudsman is a sophisticated regulator set up under the Legal Services Act. Each firm needs to have its own in-house complaints department, in any event, as a first tier. Anyone who is seeking redress has a number of routes to take. If they think the firm has been negligent, they can look at another solicitor to sue on a contingency basis. There may be firms who do multiple areas of that, but each case has to be looked at on its individual evidence, as opposed to total market failure, because often the circumstances can be quite subtle.

Q360 **Bob Blackman:** Moving back to some of the evidence that you have given us already, Mr Smithers, you talked about 1.2 million transactions a year. We are concentrating here on new builds from property developers. As you know, the number of properties built each year has been relatively low for the last 10 years or so, although the curve is going upwards. I am sure you accept that, when you have someone acting on your behalf as a solicitor or doing conveyancing, they are acting on your behalf to make sure your best interests are preserved. I think that is fair. Given the evidence we have received, why do you think it is that so many people, who are clients of those conveyancers or solicitors, have complained that they have not been given that help or advice? Why do you think that is?

Jonathan Smithers: That is a hard question to answer. I do not know the percentage of people who have complained or have had difficulty, as opposed to the total number buying new-build properties, if that is the specific level of your inquiry. That is a difficulty. Through my time in practice, I have observed that there is a strong move away from relatively small local developments of a few houses or a few flats being converted to much greater volumes.

Q361 **Bob Blackman:** Probably 10 years ago, the figures were something like 2,500 major housing developers in this country. We are now down to about 10 effectively.

Jonathan Smithers: That has driven a change in behaviour. The power of the very large developers, many of which have amalgamated over the years so there are relatively few, gives a greater power imbalance, which they utilise. They are companies, so you would expect them to do that. In a local context, I used to act regularly for clients buying from local developers, which would be in business for years and years, and do a few houses here, a few houses there and have a long-term interest in good will. That is less so for the larger developers now, because they have all the power. They have the houses. If you want to go to them, that is where you have to go.

Q362 **Bob Blackman:** Is it not even more important, then, that people who are buying these properties, particularly under leasehold, are given very clear advice by the person or firm that is acting for them? The evidence that we are hearing is that they are not getting that help and advice or, if they are, it is wrapped up. You are dealing with a firm that is a long way away, probably with correspondence by email, rather than taking the advice that Ms Rudolf was referring to: "Do you realise that these are the issues that you could face?" This is the clear concern that we are hearing from the evidence that has been presented to us by those people who are either trapped in a property they cannot sell anymore or have such onerous requirements on them that they just do not see that they were given the right advice, at the right time, before they made this decision. Do you accept that that is the position?

Jonathan Smithers: I accept that there will certainly be people who are in that people. They have considerable areas of redress that are open to them, if they are, through complaints, negligence actions and so on.

Q363 **Bob Blackman:** Negligence actions, straightaway, mean that they have to go to another firm of lawyers to try to get someone to take them on. There is a suspicion, as well, that lawyers acting against lawyers is never an easy task.

Jonathan Smithers: I reject that suspicion. There are plenty of firms that undertake professional negligence work, which are very pleased to find those things, because they are part of their business model. There are many thousands of solicitors and firms doing conveyancing. There will always be some where things do not work out well. The important thing is that there is transparency and redress for those. If there is a greater degree in a particular sector now, that is clearly a cause for concern. I hope it is a cause for concern for the Solicitors Regulation Authority to look at.

Q364 **Bob Blackman:** The cause for concern that we have been trying to draw out during this evidence session is this close-knit relationship between the conveyancers and the builders. If the position is completely independent, the suspicion will not be there. The suspicion is that the housing developers want to use these sets of conveyancers because they will just do the paper transaction without advising the clients properly.

Jonathan Smithers: I have not seen any evidence to suggest that there is a direct causal linkage between a particular group of firms doing conveyancing and the way that developers act. Again, there is no evidence for this, but I think that the number of developers getting much smaller and the power that they now have to effectively impose their conditions—because the buyer cannot go anywhere else to buy a house; they have to buy it from them—means they have much greater market power to say, "These are the papers. Take it or leave it." The solicitor acting for the buyer is not really in a position to negotiate. All they can do is say to the buyer, "These are the terms. If you want to buy the house, you have to sign here, because I cannot negotiate individual terms in the way that, 20 years ago, I could with a local developer." That is the problem, rather than there being a relationship, financial or otherwise, between the conveyancer and the developer.

Q365 **Bob Blackman:** The key issue is that the job of the conveyancer is to point out very clearly to the client, "Look, these are the conditions. This is what it means to you." A lot of these people, especially if they are buying a home for the first time, will not be aware of that. If they are buying for a second or third time, they may think, "I must bear that in mind." Here, you are looking at leases that could mean you can never sell your property. You may have to put a lot of money in to be permitted to do things. That is the clear concern that is being expressed. Ms Rudolf, do you have a view on this?

Beth Rudolf: I agree with what Jonathan said. It comes back to the fact that there is so much to advise somebody on. In this pack alone there is a tree preservation order, a charge preventing the property being altered, a clause saying that somebody else has a right of first refusal, and listed buildings. Luckily, I bought this knowing what all that meant, but I am still regretting it now. We call it the "money pit." As a layperson, how on earth are you supposed to understand that? People are so committed to transacting online and are not necessarily coming in in person. When I started conveyancing, we would gather together all of the information and then ask the client to come in, and go through it bit by bit. You could have that conversation and have a cup of tea with them—some of them used to have a fag—and they could relax and ask lots of questions.

Bob Blackman: For some people, it might drive them to start smoking.

Beth Rudolf: That is buying houses, I am afraid, but we are trying to change that. People do not want to transact in that way now. They want it to be by email. They want to read it in their own time.

The other problem that you have is that if they have been told half a story by the site office, when they receive a report and the first part of it reflects that half-story—say they have been told it is a £250 ground rent that will double after 10 years—when the report says that, but also that the next time it will double will be in three years, they do not get to that, because it has already said the bit that they were expecting to see. It is about not having information at the point that they are able to absorb it. By the time they get into the transaction, they are not just talking about the lease and the title to it. They are now talking about their mortgage offer, search results, survey and all of those things.

We did a survey and we had 1,100 respondents. We were asking about whether information was provided, and only 2% said that they had received any information prior to viewing a property. Some 94% said that they had not had this information prior to putting in their offer. There are so few people getting this information. This is something that we have raised with the MHCLG, and the National Trading Standards Estate Agency team has had its budget doubled, but that is still only

£500,000 to enforce against 14,000 estate agents and God knows how many site offices.

In changing the way the conveyancing process happens, one of the things that we are doing is working with the Home Buying and Selling Group, which is an industry group working with the Ministry. We are trying to produce one form that collates all of the information, with a section at the beginning that contains material information that would impact a decision-making process. We have had a lot of debate about how you include things like gory crimes in there, which some people want to know about.

The second part is the actual information that is needed for the conveyancing process, so the consumer can immediately see those material things at the beginning—if there have been disputes, if there is a ground rent clause or if they have to be director of a management company—but are not befuddled by the ongoing conveyancing elements, such as whether there are rights of way over the neighbour’s land and those sorts of things. We are trying to work on that, because we recognise that it is a major problem.

Q366 **Bob Blackman:** That is an issue for someone buying a house that has already been bought maybe several times. We are concentrating in this evidence session on the relationship between someone who is buying a brand new development from a developer. Your evidence highlights the increasingly abusive practices by lease administrators, with very high fees for routine tasks. In an earlier answer you gave some examples, but do you want to elaborate on those practices?

Beth Rudolf: One of our members is advising a lady who has bought a leasehold property. She has been told by the lease administrator that she owes them £709. They said, “Why do you owe that? What is it for?” Apparently, £150 is for ground rent arrears. On top of that £270 is for service of notice of assignment, £210 for collection of ground rent arrears and £25 for interest. The conveyancer has gone back to them and said, “We sent you a cheque for the ground rent, but you ripped it up because you said that the amount that we had sent you for the notice fee was insufficient.” The lease itself said it should be £25 or a reasonable fee, so they sent them £25 plus VAT. The lease administrator has come back and said, “We want £270.” There is no reasonableness around that £270, from what we have already spoken about as being a 15-minute job. That is just one case.

That lady is now in the situation where she cannot take the lease administrator to court, because they are the ones asking for money from her. She may have to wait until she sells the property. In that time, can you imagine how much those fees will go up, by the time they put on more interest and more collection fees? What is more likely is that the stress will get to her and she will just pay a cheque for whatever amount they are asking for at that point, and that is the problem.

We have these extra fees going in. There is a clause that you can put in a lease that says that you cannot sell the property without a certificate confirming that the terms have been complied with. That is supported by a restriction at the Land Registry that stops you from being able to register you ownership. On average they charge £150 to provide that certificate, but what does that certificate confirm? It confirms that you have entered into a deed of covenant, which is a void document under the Landlord and Tenant (Covenants) Act, and has been since 1996. It confirms that you have paid the fee for that. Many of them will charge, on average, £181, even though there are first-tier tribunal cases that say it should only be £80. You also have to have served your notice fee, which we have already spoken about.

As a result of this, not to mention the delays involved, the Land Registry raised more application inquiries upon registrations of leasehold—a disproportionate amount. In fact, they cancel 250 registrations a week because this certificate has not come forward. This is one of these things that has started to come up when, 20 years ago, you never saw a restriction, let alone a certificate of compliance and these charges.

Q367 **Bob Blackman:** What changes would you like to see the Government make on capping fees or doing something around these arrangements?

Beth Rudolf: I would like to see the Government put caps on these fees. They have already spoken in their implementing leasehold reform consultation on whether there should be a cap on the lease administrator's fee for providing the leasehold inquiry. We would like to see timescales put on that. We would also like a review of the Housing Act. One of the things that we have spoken about was what an onerous term is. There is a big concern about rent going above Housing Act levels. This has resulted in lenders now requiring a deed of variation or an insurance policy if the lease, at any point during the mortgage term, has rent that goes above the Housing Act. That is another sweet bit of income for lease administrators, because they are now going to charge £750 for a deed of variation.

There is an argument that this is a derogation of grant, in that any term that takes a long lease into the Housing Act makes it an assured shorthold tenancy. We would like to see the Government make good their promise to legislate to deal with the long-lease element and say that any term in a lease that would take it above £250 would be a derogation of grant and, as such, would be struck from the lease. That would solve a lot of these problems with these doubling clauses, and it would overcome the concern about human rights to income and those sorts of things, if the Government were asked to retrospectively banish ground rents. At the same time, it would allow the reasonable rents that are out there to continue.

Q368 **Bob Blackman:** The final question from me is that some of the leaseholders giving us evidence have said that the potential sales of their leasehold properties have been falling through, as a result of advice given to the prospective buyers. Are conveyancers now warning people against buying leasehold properties?

Beth Rudolf: I have again asked all of my contacts whether that is actually happening. The feedback I was getting is that it is happening far more in the south than it is in the north. I am not sure why that would be, but we are certainly told that buyers are much better informed when they are going to ask now. Conveyancers are more concerned about making sure that people are aware, because we understand that there is a lot of change coming around leaseholds. As I said before, the lenders in their handbooks are changing what they will accept. We are conveyancers, not valuers; we do not necessarily know how to value a ground rent.

Q369 **Bob Blackman:** You think the lenders are looking at this and saying, "Avoid it. We are not going to give you a loan to buy the property."

Beth Rudolf: In their handbook, the lenders set out what they will and will not accept. For example, several lenders now say that if the amount of rent goes above the Housing Act level, you have to have a deed of variation or indemnity insurance. They have only started doing that in the last six months. All of the people who have rent that is set at £500 would now have to do a deed of variation or pay for this insurance, but the conveyancer was not able to say that that was going to happen three years ago. That is the problem: you cannot see into the future. A lot of conveyancers would automatically tell people to be aware with leasehold that they will have to pay service charges and ground rent, and that the ground rent would double. As a trainer, I would always train conveyancers to run any ground rent clause in there to see where it ends up in, say, 50 or 100 years. If it looks dodgy, make sure to tell your client. We are all going to be much more careful to do that now, for obvious reasons.

Jonathan Smithers: I was reflecting that, on the one hand, there is evidence that conveyancers are increasingly not telling people about clauses before clients are buying things; on the other hand, there is evidence that more people are pulling out, which would tend to indicate that the lawyers are advising them that the terms are not as good as they could be.

Q370 **Bob Blackman:** The clear concern here, and the connection I am making, is that people who are buying for a second or third time are being advised, but people who are buying for the first time from the developers are not. That is the clear concern.

Jonathan Smithers: To repeat what I said previously, from experience I think it is less about not being told, but there being a much greater degree of inequality in the bargaining position. You are presented with a fait accompli. You tell the client, but the client wants to buy it for those psychological reasons. First-time buyers in particular do not think, "I might be here in a few years' time." It is quite complicated.

I will just add to the point that Beth was making about mortgage lenders. Following the mortgage market review, and for lots of other reasons, mortgage lenders are rightly much more worried about the strength of the covenant and whether the property is worth what they are lending on it, particularly as percentages of loan to value have been creeping up again. Lenders are naturally more aware of the amount they are lending and the risks of leasehold, and they are more sophisticated. Obviously lenders are more sophisticated and do not want to lend money where there may be some risk, so will simply decline to do that. That will have a knock-on effect in the market. All these things are interrelated.

I recall from practice a client who had 50% loan to value who could buy without any difficulty. They were selling to someone who had a 95% mortgage whose lender would not lend them the money. There was nothing wrong with the property, but the new lender of the new buyer—because they had a higher percentage or maybe were a first-time buyer—did not have the flexibility, and that affected their ability to make an offer. You simply cannot know, when you are advising someone when they are buying, what will happen when they sell.

Q371 **Teresa Pearce:** I think you were here when the previous witness was in, when we discussed onerous leasehold terms, ground rents and the possibility of legislation. The Secretary of State said, "The nature of contract law means legislation cannot change the terms of leases that have already been signed." Is he right?

Jonathan Smithers: There is a wider rule of law issue here about retrospective legislation and the terms of a contract. Clearly there are instances of parliamentary sovereignty where Parliament could do that. Whether it is advisable or not for the wider market is probably more problematic.

If one is referring to the developers who are encouraged to give deeds of variation on previous leases, there may be ways in which the Government can incentivise them to do that. The evidence of the previous witness had the example of the developer receiving money under the Help to Buy scheme, where it is clear that they are not going to get that cash or cannot participate unless they right previous wrongs. There may be ways in which the Government can do that by planning in section 106 agreements, for example. I am speculating, but there may be ways in which the Government can amend the market to ensure that developers that want to develop put right things that were done wrong previously. That is soft power, perhaps, rather than legislative change to undo existing contracts, which may fall foul of the section 1 of the Human Rights Act, about not taking away people's value in property.

Q372 **Teresa Pearce:** You think it is possible, but what are the risks of introducing legislation that is retrospective, in that way?

Jonathan Smithers: There are wider rule of law risks about unintended consequences. You cause instability in the market, as the Government can effectively undo a contract on which a free market bargain has been made between buyer and seller.

Q373 **Teresa Pearce:** You are talking about the value of property. Somebody buys something for something, but a change could crash the market.

Jonathan Smithers: Certainty is a fundamental of the rule of law.

Teresa Pearce: That is unusual in this day and age.

Jonathan Smithers: It is a fundamental. It is easier to look at a specific problem that has occurred than the wider idea that Parliament could simply legislate to change a whole raft of different bargains between buyers and sellers. For example, a buyer might say, "Instead of paying £100,000 and having a £100-a-year ground rent, I will pay £500-a-year ground rent but I will only pay £90,000 for the property", in that open-market bargain. If Parliament were then to legislate that the maximum ground rent should be £100, it would be problematic for those circumstances. It is quite a difficult argument to run.

Beth Rudolf: I am a bit more gung-ho than Jonathan, but I would say that the Long Leases (Scotland) Act did something to reduce rents. I am sure Jonathan will say, but there are very few leases in Scotland. They did it in Australia, but the Government had to compensate. There are wider unintended consequences, so you would have to be careful. I like the argument for the doctrine of non-derogation of grant, because it means you are not legislating to scrap ground rents. You are legislating to right what is essentially a wrong, in that there has been a derogation of grant if you are turning a long lease into an assured shorthold tenancy. This has not been proved in a court of law, and we hope to see a test case, but that seems to be a nice way of doing it, if that is the right word, which would penalise only those people who have gone beyond what is reasonable.

Chair: Thank you both very much for coming to give evidence to the Committee this afternoon.