

Housing, Communities and Local Government Committee

Oral evidence: Leasehold Reform, HC 1468

Monday 4 February 2019

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

Questions 465 - 613

Witnesses

I: Mrs Heather Wheeler MP, Minister for Housing and Homelessness, Ministry of Housing, Communities and Local Government; and Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges, Ministry of Housing, Communities and Local Government.

Examination of witnesses

Witnesses: Mrs Heather Wheeler MP and Lakhbir Hans.

Q465 Chair: Minister, welcome to this, our final evidence session in the Committee's inquiry into leasehold reform. Thank you very much for coming this afternoon. Could you just introduce the official who is with you today?

Mrs Wheeler: Certainly, Mr Chairman. This is Lakhbir Hans and she is the deputy director of the Department, who looks into—I have to read it properly—leasehold and commonhold.

Chair: Thank you very much. Just to begin, I will ask members of the Committee to put on record any interests they may have that are relevant to this inquiry. I am a vice-president of the Local Government Association. Could we just go round the table?

Liz Twist: I employ a councillor in my constituency office.

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



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leaseholder.

Bob Blackman: I am a vice-president of the Local Government Association and I completed the purchase of a leasehold to freehold only on Friday.

Kevin Hollinrake: I employ a councillor in my office. I am also still involved in a business that deals with lots of leasehold apartments, both individual and in blocks.

Mary Robinson: I employ a councillor and also have a property that has a leasehold on it.

Andrew Lewer: I am a vice-president of the LGA.

Mrs Wheeler: I am an ex-vice-president of the LGA. I employ the husband of a councillor in my office, and I think that is about it now.

Q466 **Chair:** Minister, thank you for joining with us in that declaration. That is very helpful. There has been a lot of press interest in leasehold and a lot of interest from our constituents up and down the country. Indeed, we had over 700 pieces of written evidence for this inquiry. We had a roundtable with leaseholders. We had 200 who wanted to come and we had to ballot out to get 50 people to come as representatives of the wider group. What happened at that meeting was quite interesting. At the end of the meeting, we asked, "What could be done that would really improve things?" and someone said, "Abolish leasehold." An absolute roar came from everyone in the meeting. It is not very often that Ministers get that sort of acclamation, is it, when you go to meetings? Is that something you might think about doing in order to get the support of all these people?

Mrs Wheeler: I am fascinated that that was the response, Mr Chairman, and again, thank you very much for inviting us here today. Was that the response you got when you did a roundtable with freeholders?

Q467 **Chair:** We did not quite have that. Perhaps we would not have anticipated it if we did.

Mrs Wheeler: It just proves, doesn't it, what a very complicated situation this is? That is why I am absolutely delighted that you are holding this inquiry. We have done a lot of work in the Department already, and you know we have the Law Commission looking into different sections of this for us as well. We will not be putting out the responses to our consultations until we have read your report, Mr Chairman.

Q468 **Chair:** We are always glad to be of help to Ministers, of course. Just instinctively as a Minister, do you see a future for leasehold, or can you see commonhold, which is an alternative, eventually replacing it?

Mrs Wheeler: That is a completely fair question, and the straightforward answer is there is always a choice and the opportunity for choice here, because there will be some people in blocks of flats who really just want



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to go home at 6 o'clock or 6.30, shut the door and have nothing to do with the running of it. They just want to pay a managing agent, have a freeholder and not have those concerns at all. Commonhold has an absolute future, and you may or may not be asking me this question, but there has been a bit of an issue with Help to Buy over it. It has been made completely clear to Homes England that we have no problems with commonhold at all. If a firm comes to them with an opportunity to build something that ends up being commonhold, that is absolutely fine by us. It is all about choice.

Q469 Chair: It is not really, is it? Although the Law Commission, as I understand it, is investigating why commonhold has failed to take off—probably because of legal obstacles—the reality is that the possibilities are there but developers are simply not building commonhold, are they? It just is not happening.

Mrs Wheeler: You are quite right. We are talking about something like 16 units across the country, but that does not mean to say that it does not have a future and it does not mean to say that, with a small amount of encouragement that we have now given to Homes England, there will not be some others coming on. It is complicated when you get a joint development, for example with shops underneath and flats above. If it is a straightforward block of flats in its own discrete unit of land, that is relatively straightforward and somewhere to go.

Q470 Chair: But it still is not happening, is it? That is the reality. The lenders are diffident, in some cases, about lending on commonhold property. There is often a lack of information. It was left for the Ministry of Justice to publicise this and, basically, they have done nothing, have they? Are we saying now that your Department will be a bit more proactive in pushing and promoting commonhold as a genuine alternative?

Mrs Wheeler: We already have been more proactive in it, Mr Chairman, but my deputy director would like to say something, if that is all right with you.

Lakhbir Hans: If I can just add, we have asked the Law Commission to take forward a piece of work to reinvigorate commonhold. They are doing that. The Government have stated their intention to remove barriers to commonhold and to find ways to incentivise or otherwise encourage greater availability of commonhold. It is about what the Minister has said about choice and making sure that it is a genuine choice, so that commonhold is there as a viable alternative; that is the ambition.

Q471 Chair: But while developers can think of their future income stream of ground rents, they are not really going to be terribly incentivised to produce commonhold, are they?

Mrs Wheeler: It is interesting, because some of the evidence that you received is that some developers do not monetise ground rent at all. It really is horses for courses, Chairman.



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Q472 **Chair:** But some do.

Mrs Wheeler: Some do.

Q473 **Chair:** There is a disincentive, is there not, in the current system that does need addressing, surely?

Mrs Wheeler: Frankly, I do not agree with you.

Q474 **Chair:** Why?

Mrs Wheeler: Because it is about choice. If you want to be commonhold and if you want to take on the responsibility for it, fantastic. If you do not want to do that because you want to be a lock-up-and-go tenant or a lock-up-and-go leaseholder, then you do not want to get into it, do you?

Q475 **Chair:** That is assuming that there is a level playing field and a choice at present, which a lot of our evidence says there is not.

Mrs Wheeler: That is why we can encourage Homes England to make sure other people know and lenders know that this is a perfectly viable way of developing for the future.

Q476 **Chair:** Can you think of a useful service that leaseholders get from the current system that they would not get if a commonhold arrangement was in place?

Mrs Wheeler: Yes. They do not have the responsibility of having to organise the managing agents themselves. They do not have the responsibility of dealing with the sinking fund themselves. There are many things that they just do not have to do. They just lock up, pay the money and walk away.

Q477 **Chair:** That is the problem, is it not? We will come on to that in a minute. The fact that they do not have any control over the managing agent often causes problems as opposed to having control over them, but we will come on to those issues in due course.

Mrs Wheeler: That is a different question, Chairman.

Q478 **Mary Robinson:** Minister, a significant number of new homes have been built with leases attached to them. Some of the discussion has been around just what constitutes an onerous lease. Do you agree with the chief executive of the Leasehold Advisory Service that any ground rent over 0.1% of the value of the property is onerous, or are developers and freeholders right to say that only doubling ground rents are onerous?

Mrs Wheeler: I find fascinating this idea of 0.1% being the litmus test as to what is onerous or what is not onerous. It is not just about money. Certainly, I consider ground rent that doubles in 10 years or 15 years to be onerous; equally, it is about things like permission fees that you have in certain leaseholds. They are absolutely, in my view, something that should not be there, and we are again looking at information to see how we might be able to make those changes. They are more the onerous



issues. In terms of 0.1%, it depends. If you have a £1 million property and it is £1,000 a year, you might not notice it, but if you are looking at £200,000 and it seems an awful lot more, it does.

Q479 Mary Robinson: Some argue that the offers made by developers and freeholders to convert those doubling ground rents to RPI-based mechanisms may still leave leaseholders with an onerous ground rent. It is a subjective area. Are the Government right to encourage developers and freeholders to introduce such schemes?

Mrs Wheeler: We are right to introduce that because it is a major change and a major step forward compared to the lease arrangement that they have at the minute in terms of the doubling ground rent. Equally, with all of these things, it really does depend on where you start. If your ground rent is £250 and it doubles, that is a lot of money. If your ground rent is £25, that is slightly more doable.

Q480 Mary Robinson: I am just looking at intervention. In correspondence with the Committee, the Secretary of State said, "The nature of contract law means legislation cannot change the terms of leases that have already been signed." We heard that, legally, it would be difficult due to human rights legislation, but the Government could legislate to amend onerous leases if it chose to. Would compensation of freeholders not be one way to satisfy human rights law and might it not even need that?

Mrs Wheeler: Regrettably, the legal advice we have had is what you have heard: it would need to be compensated out. To look at what happened in Scotland, you were talking about 9,000 leases that were compensated out. We are talking about over 4 million leases in this country. The numbers are horrendously expensive. I would much rather go down the voluntary route.

Q481 Mary Robinson: How else could the Government force developers and freeholders to amend onerous ground rents and other terms in existing contracts, if they are not going to do it voluntarily?

Mrs Wheeler: In the short run, we are getting very good pick-up from freeholders who are volunteering to make those changes. It is really interesting. There was one particular freeholder we talked to who had sent out letters to their leaseholders, and they were surprised that 3% of their leaseholders had come back to them on it—only 3%. Again, this inquiry has been incredibly helpful in getting this information out there. Certainly, I say to any leaseholder who has had a letter from their freeholder volunteering to offer to make changes to their leasehold and their particular ground rents or some of their permission fees, "Please contact them again and open the dialogue."

Q482 Mary Robinson: 3% is a surprising figure.

Mrs Wheeler: It is very surprising.

Q483 Mary Robinson: It probably would not be reflective of what we have



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been hearing during the course of the inquiry. What sort of idea have they given you as to why it is so low?

Mrs Wheeler: Some people do not really like official letters. It is the classic thing where you put it behind the clock on the mantelpiece, don't you? To me, doubling ground rent is a horrible thing; other people just think it is the price of doing business. I do not know. I would like to talk to some of those other people again. We will be having future roundtables—not just with leaseholders, but with freeholders.

Q484 **Kevin Hollinrake:** Minister, the chief executive of the Leasehold Advisory Service, which is your body that deals with some of this stuff, has said that, as you mentioned before in terms of the 0.1% of the value of the freehold, if the ground rent is higher than that, then that is onerous. Does that mean, if it is below that, that the Government's position is that it is not onerous?

Mrs Wheeler: No. As I mentioned before, I genuinely think this business of doubling within 10 years or 15 years is not acceptable.

Kevin Hollinrake: Agreed.

Mrs Wheeler: Thank you. That takes us away from the 0.1%.

Q485 **Kevin Hollinrake:** Why does it? How is that relevant to the doubling?

Mrs Wheeler: I beg your pardon. Are you just talking about the monetary value or the process of what happens?

Q486 **Kevin Hollinrake:** I am talking about the monetary value. If it was below 0.1% today—ground rent versus long-leasehold value—effectively the CEO of the Leasehold Advisory Service is saying it is not onerous. Do you agree with that?

Mrs Wheeler: That is one view and I take a different view.

Q487 **Kevin Hollinrake:** Do you think it is onerous below that figure?

Mrs Wheeler: I had a flat 30-odd years ago and I was paying £25 a year. I do not know what that would be on RPI now, but you always come back to what you know about, don't you? Lakhbir might like to say something.

Lakhbir Hans: Can I just add to that? The Government have already said that they would set future ground rents at a peppercorn, so that is the position that the Government have taken in terms of future leases. There are many factors, some of which the Minister has mentioned, which we think contribute to an onerous lease, so not just ground rent but other aspects.

Kevin Hollinrake: In terms of increasing.

Lakhbir Hans: Yes. It could be that the individual has problems re-mortgaging or selling, or permission fees, which the Minister has



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mentioned. There are a whole range of factors that could define it as an onerous lease.

Q488 **Chair:** I just have a quick follow-up: do you think the Government have rather raised expectations among people with their announcement saying, "Leasehold is a problem. We are going to deal with it," when what you are really dealing with is new leaseholders, for the most part, and most existing leaseholders will not see any change from Government policy at all?

Mrs Wheeler: I hope not. Because of the voluntary agreements that existing freeholders and existing leaseholders are discussing, that means that there will be changes. Frankly, Chairman, you have to start somewhere, don't you? We have made a start. There have been some voluntary agreements between freeholders and leaseholders and, clearly, we want that momentum to carry on. If you like, there are two parts to the problem: existing leaseholders and the ones going forward, which are brand new ones.

Q489 **Chair:** With existing leaseholders, you referred to the voluntary arrangements, but Government are not going to act, are they, to force freeholders to do anything in this area?

Mrs Wheeler: As we have already stated, the difficulty is that it is a contract between two people.

Q490 **Chair:** Therefore, the answer is that no, you are not, is it not?

Mrs Wheeler: If the human rights lawyers want to jump down my throat, they are going to do that, are they not, Chairman? There is not much I can do about that.

Q491 **Chair:** That is an answer. In terms of the 4 million leaseholders out there, how many are going to be covered by the voluntary arrangements?

Mrs Wheeler: Hang on a minute, Chairman. We have not got on record how many of the 4 million freeholders have onerous leases. The ones that we have to crack down on are the onerous leases, so that varies, does it not, between 12,000 and 100,000? That is a much smaller figure than 4 million. Let us put it in perspective, Chairman.

Q492 **Chair:** How many leaseholders are covered by the voluntary arrangements?

Mrs Wheeler: It is an organically growing market, Chairman.

Q493 **Chair:** Can we have a figure from the Department? You have a list of the freeholders involved, so can we have a figure?

Lakhbir Hans: Some of the developers we have talked to, as well as other stakeholders, agree with the figure of around 12,000 who have doubling ground rents. We understand that those are the individuals who will be approached to change the terms of their leases. Onerous leases



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are either doubling ground rents or, as I mentioned previously, could include other terms that are deemed to be unfair. Estimates that have been discussed in this Committee are around 100,000 of those.

Q494 **Chair:** How many leases are covered by the voluntary agreement?

Mrs Wheeler: It has not been written yet, Chairman. It has not been nailed down. It is work in progress.

Q495 **Chair:** We have referred to voluntary arrangements that are being promoted by some freeholders. How many leases are covered by those?

Lakhbir Hans: Each of the developers will have a number of leases.

Q496 **Chair:** Can you get that for us? You know all the developers' names; we do not. Can you get that for us?

Lakhbir Hans: We can take that away.

Mrs Wheeler: We will just take that away, Chairman.

Chair: That would be helpful, thanks. Can we have a clear definition of what the Department regards as onerous?

Bob Blackman: Sorry, Chairman. Could we also, at the same time, have a position about the number of leases that the Department believes are covered under "onerous"?

Chair: Both figures and the definition.

Q497 **Bob Blackman:** That would be very helpful because we would then be in a position to know exactly where the Department is going.

Mrs Wheeler: Not that I want to use the figure of 100,000, but 100,000 out of 4 million does put it in perspective, and 12,000 out of 4 million really puts it in perspective.

Q498 **Bob Blackman:** I just want to pick up on this because this is important. The definition of what is onerous is the key here, because it could well be that the Department's view of what is onerous would not be what the general public's view of "onerous" would be. We could be in a position whereby the Department says it is 100,000 and, out there, people may be thinking it is a lot more; it may run into millions. We have to be careful about where the definition lies.

Mrs Wheeler: Yes. We start with the position of the doubling of ground rent between 10 and 15 years. That is our starting point but we will dig into that for you, Chairman.

Chair: Can we have the number attached as well? Thank you.

Q499 **Kevin Hollinrake:** On a similar subject, in terms of ground rent on future leases, the Government first announced that the ground rent was going to be set at a peppercorn level, with zero financial value, and then said they were going to cap it at £10 per year. They are both pretty low, but they are two different things. Why the difference?



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Mrs Wheeler: We started with the phrase “peppercorn”, then “non-monetary value” and then “capping”, so up to £10. Social housing leaseholds are at £10, and that is where the £10 came from. There would be equity between social housing leaseholders and private leaseholders, but it is up to £10. It is of no monetary value, so you take that going forward, without RPI or anything like that afterwards. There are difficulties with lots of contract law that talks about peppercorn value, and other people who then use peppercorn value. Without banging on about it, my lease was peppercorn and 30 years ago it was £25. Who says what “peppercorn” means? That is why we wanted to suggest putting a cap of up to £10 on it. It could be that the leaseholder and the freeholder agree it is £1 per year and does not increase.

Q500 **Kevin Hollinrake:** You made some very good points in your opening remarks when talking about the fact that some leaseholders just do not want the hassle. Some do and want to get involved, for example, and some want to hand that on to somebody else. You also said there were some situations whereby, if it is a block sat in the middle of an open bit of land and it is pretty straightforward, commonhold might be great. For complex ones, where there are complex systems within a building, or where there is mixed use, mixed tenure and commercial property in there, mechanical engineering works in there, or combined heat and power plants, for example—all these kinds of thing—you need a professional to help you manage all this stuff. Which freeholder is going to be interested, when the ground rent is only £10 or less, in associating themselves with that freehold and all that hassle? We have heard evidence that it costs more to collect it than it does to do any work in terms of management.

Mrs Wheeler: I agree with you. Some of the evidence that we have seen does say that. Equally, we have received evidence from freeholders who do not monetise the ground rents. That is not part of their business model. Equally, in effect, that is what your service charges and your sinking funds are for.

Q501 **Kevin Hollinrake:** They are separate things. That is about the maintenance of the building—communal areas, for example, or insuring the building. This is about an experienced professional freeholder who has some skin in the game in terms of managing a very complex block. Which commonholders are going to want to have to do negotiations between themselves and the retail premises that might be involved in that complex, or the difficulties regarding the complex mechanical engineering installations?

Mrs Wheeler: I agree with you, and that is why I said, early on, sometimes commonhold will not be the answer, because it is just too complicated. We have freeholders who have given evidence who do not monetise ground rent, so they are in the game.

Lakhbir Hans: Just on top of that, the Law Commission’s proposals on commonhold do look at ways of making the model work with complex



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arrangements like that, where there are commercial or other tenures. They are looking at how you can make that work. That has been one of the issues with why it has not worked so far, but they are looking at how you can remove some of those barriers.

Q502 Kevin Hollinrake: It is also true to say that they have flagged up some concerns within their report as well, have they not? In chapter 11, on emergencies, they have said, for example, that, in a situation where you have a Grenfell-style remediation requirement, freeholders have skin in the game in terms of stepping in and doing important remedial work currently. That is what chapter 11 says in the Law Commission report. How are you going to replace that? How are you going to get somebody who has overarching responsibility for the block to say, "Don't worry. We will sort that for now," and then work in terms of allocating the costs of that work later? What is going to happen there?

Mrs Wheeler: The straightforward answer is that it really is interesting in terms of the information that has come in from certain freeholders who are not interested in ground rent and have been in the game for many years.

Q503 Kevin Hollinrake: Who was that?

Mrs Wheeler: Peabody was one of the groups that talked about it.

Q504 Kevin Hollinrake: Do you not see that there is a potential issue here, if nobody is going to be interested in a complex block? I take your point entirely about onerous leases. You move from an onerous lease being above 0.1% of the value of a property, which, on an average house price of, say, £200,000, might be £200 a year, and suddenly go to £10 or below, therefore sweeping to one side any financial incentive in a freeholder being connected with a building. Nobody supports a freeholder trying to exploit the tenants in a building, as has been happening, but suddenly you potentially open the possibility of a freeholder that would have a benevolent role within that block not being interested in providing that custodial approach at all in the future. Do you understand that potential problem?

Mrs Wheeler: We have certainly had evidence to that effect as well, Chairman, which, again, is why your inquiry is so helpful. There are polar opposites in this space.

Q505 Kevin Hollinrake: If you set it as it is now, however, there is no carve-out for that situation. You are going to stop anybody having any interest as a freeholder in that block. How are you going to resolve that situation?

Mrs Wheeler: Again, I come back to the point that some freeholders work on that basis; some freeholders do not. That is the evidence we have been given.

Q506 Kevin Hollinrake: I would be really interested to know which freeholders would be interested in managing a block with an overall freehold below



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£10 a year. Could you write to us on that basis? I have not spoken to anyone who would be interested in that situation.

Mrs Wheeler: You speak to some very exciting people, perhaps many more exciting people than I do.

Kevin Hollinrake: Yes, it is the nature of my job.

Q507 **Chair:** Could we have that information?

Mrs Wheeler: I do not know. We will see what we can find for you.

Q508 **Chair:** Could you explain this? I still do not get, following Kevin's points, why you changed from peppercorn to £10.

Mrs Wheeler: I explained about the social leases, which are £10 now. There is tonnes of contract law about what a peppercorn means. Sometimes it is monetarised; sometimes it is not. It may well be that we do not do it. It is just that you have to start somewhere, so "up to", capping it or making it a quid might be the way forward, but it means that they are on a par with social landlord leases.

Q509 **Chair:** Yes, but they are different in a variety of ways anyway, as we will come on to look at in terms of consumer redress issues. They are different. I cannot understand why there is a need to replicate in the commercial market something that simply exists for social landlords now.

Mrs Wheeler: It could well be that we do not do it, Chairman, but you have to start somewhere, and there is this grey area of what "peppercorn" actually means.

Q510 **Kevin Hollinrake:** Just going back to my points about the difficulties in managing a complex block, we know that only eight out of 20 major lenders currently lend on commonhold. I guess they are particularly nervous around this kind of issue. What we are trying to make sure of is that we do not fall into the trap of an unintended consequence. Do you see that there is a potential issue here with the construction of a complex block, where there is a grey area of responsibility around the proper stewardship of that block, which might cause problems for lenders and, therefore, make the properties less valuable and less likely to sell?

Mrs Wheeler: I am wondering if you heard any evidence from any leaseholders who lived in one of those blocks to give their view on the ground rent that they are paying.

Q511 **Kevin Hollinrake:** I am not really talking about ground rents that are onerous. We would all agree that that is something that we have to stamp out. It is the issue around the stewardship of a complex block, where commonhold does not currently provide a solution.

Lakhbir Hans: Just to add to what the Minister said, we completely understand the arguments that you are making, and these views have been presented to us as well. In terms of the arguments around stewardship and having a long-term interest in the building, all that



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evidence has been given to us and we are considering how it fits into what this new world of leasehold looks like with the various reforms, the obligations around some of the future responsibilities around the maintenance and the upkeep, and the Hackitt recommendations around dutyholders. We are aware of all these issues being raised and we are looking at how the various bits of the jigsaw need to fit together.

Q512 Kevin Hollinrake: Are you going to tackle that by improving commonhold or by carving out a larger ground rent to incentivise freeholders?

Lakhbir Hans: We have to look at how it looks in the round. We would need to look at what the Law Commission comes up with in terms of its proposals on commonhold. We also need to look at how we are going to practically apply the dutyholder responsibilities. Behind all this is the need for transparency and clarity around what individual leaseholders have to pay for those particular services or obligations.

Q513 Kevin Hollinrake: You have not ruled out a ground rent of about £10 a year?

Lakhbir Hans: Both the Secretary of State and Ministers have made it clear that it is zero financial value. That has been the commitment and, at the roundtable last week, the Secretary of State reiterated his view that he intends to maintain the view that there is no monetary value that can be charged in leases.

Mrs Wheeler: Thank you very much. One of the things I do find utterly fascinating is that a building might be beautifully maintained at a peppercorn ground rent or poorly maintained at £500 ground rent. The amount of ground rent payable is no indication of the quality of the maintenance and services provided, and people need to get that into their heads a little bit, please.

Chair: There is no incentive for the owner of the freehold to do any more than they would want to do, because the ground rent does not change with how much work they do to the property. That is some of the evidence we have had as well.

Q514 Bob Blackman: We have had about 700 individual responses in terms of leaseholders complaining about the service they have received. Most of those, it is fair to say, are first-time buyers. One of the things that everyone has been complaining about is that there appear to be hidden onerous charges that they do not understand. They are being sold on the basis of, basically, freehold, but actually it is not; it is leasehold. There are all sorts of false assurances of being enabled to buy the freehold at an agreed price within a relatively short period, and then those being reneged upon. To me, all those things sound like mis-selling. Do you agree?

Mrs Wheeler: It is incredibly difficult to label it like that. It is a contract between two people. Things ought to be, first of all, in writing, and



secondly, they need to get completely clear legal advice on what it is they are buying, why they are buying it and what the duties, therefore, go on to be. It is very difficult when the ground that the builder buys is leasehold and, therefore, it would then be quite normal for the builder to sell on a leasehold after that, but if you are a first-time buyer and this is something completely new to you, you are not really going to know about it. Some of us have been around a bit and we get it, and also it is much more traditional in certain parts of the country than in other parts.

Q515 Bob Blackman: I personally would draw a distinction between someone who is buying a flat and someone who is buying a house, whether it is a row of terraced houses or whatever it is. There is a clear distinction between the two. It would appear to me that people do not necessarily understand a lot of these hidden items that are contained in the legal documentation. They may misinterpret them. We will come on later to the issue of the legal advice they are given. Many people have compared to this to the mis-selling of PPI in the finance industry. Do you agree that this could be comparable in any way?

Mrs Wheeler: I find that a very difficult comparison because, in effect, with PPI, you were sold something you really did not need, whereas this is completely different, isn't it? It is a contract and there was legal advice, but perhaps people are caught up in the moment because it is their first purchase and it is incredibly exciting: "That is the estate we want to live in, in that village, and this is the only place that you can get a property." It is very difficult, but we have absolutely said that, from 21 December 2017, no new houses should be sold as leasehold unless the land is leasehold. That just should not happen. There are other issues. The numbers have dropped dramatically. They have absolutely dropped dramatically.

Q516 Bob Blackman: Indeed, in November, the Secretary of State wrote to the Competition and Markets Authority and also to the Solicitors Regulatory Authority about the questions about these practices. What has been agreed with the CMA and the SRA?

Mrs Wheeler: The CMA has been quite strong in saying that it does not think that there needs to be an inquiry because we know the facts. You are doing an inquiry and we have had a consultation on it as well, so the facts really are quite well known, so their view is that they do not need to do an inquiry. They must speak for themselves. The SRA have been very—I will not use the word "helpful" because that is not the word I am looking for—clear that, where there is any evidence of lack of clarity as between the guidance for a solicitor or a conveyancer who they are acting on behalf of, because of course they are acting on behalf of the person buying the property, get the evidence to the SRA and let us get the Legal Ombudsman involved.

Q517 Bob Blackman: One of the suggestions that has been made is that developers should provide purchasers with simple key facts in relatively simple, easy-to-understand, proper English, as opposed to the legalese.



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Do you agree that that might be a way of resolving some of the issues, so that people understand what they are buying, what their obligations are and, importantly, what the obligations are from the other party?

Mrs Wheeler: I do agree that the “how to” guides that we produce as a Department should be the way forward to help folk. It would be difficult for any developer to do that immediately, other than as an aide memoire, because you should not rely on that. You should rely on the legal advice that you are given and that you are contracted to pay for. Do you want to add something, Lakhbir?

Lakhbir Hans: Just to say that that is one of the ideas that has come forward. We are doing some work with Lord Best, as you may know, who is looking at how both the managing agent and estate agent sectors can be regulated and how some of those practices can be spread throughout the sector. There are a number of ideas that could come forward, which would make that type of information and clarity about what it means for individuals who are purchasing properties much clearer and easier to understand.

Q518 **Bob Blackman:** That is something that would be very helpful for most people, particularly when they are buying their first property. If they are a bit more experienced, possibly that is a differential. The final area I want to concentrate on, which you no doubt will have seen if you have read the transcripts or have been watching our inquiry, is this practice among developers of selling the freeholds to institutional investors without offering it to the leaseholder first off. In fact, the chief executive of Bellway Homes came in front of us and said the policy of the company is to sell all the freeholds two years after they finish the development and not even talk to the leaseholders at all, which I said to him I regarded as a scandal. There should be a law. Clearly, they are not breaking the law, but clearly the law needs to be changed, so that there is the right of first refusal for a leaseholder to have the opportunity to buy the freehold. That is my view. Do you agree?

Mrs Wheeler: Yes. When you say they are not breaking the law, this is a really strange area that has come out in the inquiries, in that leaseholders of flats have a legal reliance on first refusal, but leaseholders of houses do not. It is just naturally not in the law. We are minded to change that, but, clearly, that is new houses going forward. We can legislate when parliamentary time allows.

Q519 **Bob Blackman:** This is also something that is important in the process. I can tell you that, not in my constituency but on the edge of my constituency, a whole new estate is being built, where the homes, which are houses, have all been sold under leasehold arrangements. They are, in my view, very onerous leases and, indeed, the freehold has been sold from under them. The financial institutions that have the freeholds are now squeezing the leaseholders very badly in terms of every single issue they can find. While I agree with you that we have to do this going forward, we have to find a way of retrospection. Do you think that is



possible?

Mrs Wheeler: The work that the Law Commission is doing for us about enfranchisement is looking at fairer, faster and cheaper; I do not like the word "cheaper" and we will find a better one, but it trips off the tongue, doesn't it?

Bob Blackman: "Cost-effective".

Mrs Wheeler: Fairer, faster and cheaper is what we have asked the Law Commission to look at. In terms of the enfranchisement rules that they are looking at for us, again we want to see the evidence and we want to see the end of that piece of work, because it is a big piece of work. We all know that there are different tribunal cases going on at the moment anyway, so it is not appropriate to say anything more than that. However, it is our clear intention to make enfranchisement for houses and flats cheaper, faster and fairer.

Q520 **Bob Blackman:** We do have the problem, given that that has been the practice of a large number of building developers. Some have changed their policy going forward, it is fair to say, but they have sold their freeholds to financial institutions and, if the leaseholder goes to them, they say, "Yes, you can buy the freehold. The price is now X," which has suddenly skyrocketed way above what it would have been had they bought it either from the developer or at the time they bought the property. We need to close this loophole somehow, which needs retrospection. I do not expect an answer today, but can we have a look at taking this back some period of time to enable leaseholders who are now in a position where they cannot sell their properties because the terms are so onerous that no one will buy them, or the lenders will not lend someone else the money to buy the properties? People are trapped in an unfair position.

Mrs Wheeler: You are stating it very boldly and very clearly. That is absolutely the reason we asked the Law Commission to go into this in great depth for us, so I look forward to receiving the result of their investigations.

Q521 **Bob Blackman:** Do you have a timeframe from the Law Commission?

Mrs Wheeler: Was it later this summer?

Lakhbir Hans: Yes. The consultation on enfranchisement completed on 7 January. They have had over 1,000 responses, so we are looking forward to receiving their recommendations, but we think it is later on in the year, probably the summer or maybe later. It is still in discussion.

Q522 **Chair:** That is enfranchisement in its widest sense, but here we are talking about a situation that Bob Blackman referred to, where people had the right of first refusal and it has been denied to them by a ruse, where the developer is selling it on to a subsidiary of their own, and then selling the subsidiary on to an institutional freeholder. That is simply



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getting around what Parliament intended, so does that need closing, full stop?

Mrs Wheeler: Sure, and if the law has been broken or got around, that is something that we would absolutely want to look at it.

Q523 **Chair:** You did not like the term “mis-selling”, but the issue was serious enough for the Secretary of State to write to the Solicitors Regulatory Authority and the Competition and Markets Authority, as you have accepted. Has any action been taken against any developer because of complaints that have been made?

Mrs Wheeler: The point of your inquiry and our inquiry, and of the work at the Law Commission, has brought a lot of freeholders to the table to discuss voluntary agreements. I will not say that they know the game is up, but they realise that the pendulum has swung the other way and that this is not the right way to do business.

Q524 **Chair:** But no action has been taken against any developer, has it, for engaging in what some people call mis-selling but you want to recognise as a problem?

Mrs Wheeler: I endorse what the Solicitors Regulatory Authority has said: if there is wrongdoing here, get the evidence to them and they will do something about it.

Q525 **Chair:** So far, no action has been taken against anybody, has it?

Mrs Wheeler: I do not know if anybody has taken that evidence to the SRA.

Q526 **Chair:** But the Department is not aware of any action?

Lakhbir Hans: No, we are not.

Mrs Wheeler: No, we are not.

Q527 **Liz Twist:** On the subject of solicitors and the conveyancing process, we have heard that developers incentivise leaseholders to use their preferred conveyancing solicitors through offers of discounts or gifts such as free carpets or putting a lawn down. At the same time, however, many of the leaseholders we heard from have accused their developer-recommended solicitors of failing to highlight those onerous ground-rent terms. Where conveyancing solicitors rely on repeat business from developers, can they ever offer truly independent advice to prospective purchasers?

Mrs Wheeler: That is a very good question. Their professional standing among their peers would, to me, mean that they would want to give professional and independent advice. I would, again, urge anybody who has absolute facts on this matter to go to the SRA about it, because the sooner that we get these written facts out there and the Legal Ombudsman gets into it, the better, frankly.

Q528 **Liz Twist:** Yet a lot of leaseholders we heard from, particularly in terms



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of new-builds, were telling us that they were concerned about going through formal processes to pursue these things because they are just doing it by themselves, as individuals. It is that power balance that they feel is not right. Do we not need to have something that redresses the power balance there?

Mrs Wheeler: Our arm's-length body, LEASE, can help in the first instance to give initial legal advice, but I would have thought that, if this was turning into the scandal that we all think it is—whether it is 12,000 or 100,000, and we have to try to define it—there would be other firms that could do a class action or something like that. It is interesting that that has not happened yet.

Q529 **Liz Twist:** Yet we did hear from lots of witnesses—and we have probably all heard anecdotally—about this happening. Do you think that the Government need to take some action to put that right? Should developers be prohibited, for example, from recommending specific solicitors?

Mrs Wheeler: We have certainly suggested that, where that does happen, it must be absolutely transparent. Things like fees between the two groups and that sort of thing should be transparent as well. One of the ideas on this plain-English “how to” list would be what transactions there are between a developer and a conveyancing professional.

Q530 **Liz Twist:** Perhaps transparency may not be the only answer. Clearly, transparency is helpful, but do we need some more guidance or regulation in this area to stop it happening?

Lakhbir Hans: Can I just come back to the work of the Lord Best group, which is looking at how you can regulate the property agent sector, which covers estate agents, but also then looking at people who are attached to developers who are selling or marketing properties on their behalf? We need to think about how we can make sure that, in terms of the process of selling new properties, there are safeguards put in place through some sort of statutory code, as well as professionalising the sector through other means.

Q531 **Liz Twist:** That would include looking at the relationship between developers' solicitors and the impact on buyers.

Lakhbir Hans: Yes, and there is another piece of work in the Department on the home-buying and selling process, and looking at what needs to be done to improve that and to make sure that there is independent advice to consumers.

Q532 **Liz Twist:** Finally, is it ever ethical for referral fees to be paid by solicitors to developers in order to get the repeat business?

Mrs Wheeler: That is a really good question. It is interesting how it has become custom and practice. I made a speech at the licensed conveyancers conference only last week, thinking about it—time flies—and, in the room, there were murmurings against this sort of thing



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happening. I thought that was quite interesting: those in the profession are finding this a difficult question.

Q533 **Liz Twist:** Again, is that something that the work being done by Lord Best might look at or something that the Department might consider looking at in response?

Mrs Wheeler: I am not desperately keen inside myself on banning things, but, if something is wrong, it should stop. Transparency—if you buy something, you ought to know what is behind it. If I am going to use Fred, and Fred gives 15% back, I want to know why.

Q534 **Kevin Hollinrake:** Can I just clarify that, please? Are you thinking of banning referral fees or not?

Mrs Wheeler: We want to see how the inquiry goes and then we will look at all the evidence. We have not made a decision.

Q535 **Kevin Hollinrake:** You say you want transparency and you are not against a ban?

Mrs Wheeler: I believe professionalism and transparency are the key to better outcomes for the buyer and the seller.

Q536 **Kevin Hollinrake:** But you are not ruling out a ban either? That is a different thing from transparency. There is a difference between transparency and a ban.

Mrs Wheeler: I await with interest the inquiry's report.

Q537 **Mr Dhesi:** Minister, some estimates suggest that well over £1 billion is being overcharged in service charges each year. We as a Committee have heard that service charges and bills for major works can be very poor value for money and lack transparency for stakeholders and leaseholders. When exactly will the Government finally launch their new regulator for managing agents?

Mrs Wheeler: We do expect Lord Best's report to come out at the end of the summer this year. Part of that is about regulating property managers. Again, it is a very far-ranging piece of work that Lord Best is doing and we will take it forward after that point.

Q538 **Mr Dhesi:** There is no specific date as yet?

Mrs Wheeler: No. I feel it is very important that we get all the facts. The people sitting on it are extremely experienced, and there are also sub-groups of it getting other experienced people giving their evidence to it as well. I want this to be as thorough a piece of work as it can be.

Q539 **Mr Dhesi:** I understand that there have already been consultations that the Government have conducted. They summarise many of the complaints: service charges are uncapped, seem indisputable and do not provide service. They have been known to increase the amount without consultation and so on. If we have had all that, why are we still at the



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stage where we need another study and we cannot launch this regulator for managing agents?

Mrs Wheeler: Because, I am afraid, it is a very complicated area and it is part of the work in the round to professionalise the sorts of people working in this field. That is the way forward.

Q540 **Mr Dhesi:** We as a Committee have also had evidence of leaseholders' reserve funds being stolen. Sections 42A and 42B of the Landlord and Tenant Act 1987 were introduced through the Commonhold and Leasehold Reform Act 2002 to help protect those very funds, yet they have never been brought into force. I find that absolutely shocking. When will the Government finally commence those, Minister?

Mrs Wheeler: Again, Lord Best is looking at this for us. It is about the standards of use and presentation as well as about service charges. We are keen that this is going to be looked at because there are ways of getting these moneys back through professional negligence insurance and what-have-you. I am not saying it is a rare occurrence, but I am glad to say that it does not happen that often.

Q541 **Mr Dhesi:** According to the evidence that we have received, it does happen very often. In fact, this is believed to be the only area in the UK in which money is held by a third party and not regulated. The Federation of Private Residents Associations, for example, has given a lot of evidence. Chair, if I may, an individual can set up a business as a property manager without any formal qualifications. They could have a criminal record, yet they can still carry on the work. It just seems to me that they are holding a lot of money and a lot of deposits, but, as a Government, you are still in consultation and we are now awaiting Lord Best. Surely this is something that we should have acted upon a long time ago.

Mrs Wheeler: The straightforward answer is that most reputable landlords and managing agents do work to an existing code of practice, such as the RICS or the ARHM. Not only do they have service codes, but they have guidelines around client money and they have client protection. It is incumbent on people to make sure that they use reputable people.

Mr Dhesi: It is still not regulated. There is no involvement from the Financial Conduct Authority either, but I will leave it there, Chairman.

Q542 **Matt Western:** Just briefly, Minister, it just strikes, I am sure, all of us that this is yet another scam in a long series of scams that we have had in the sector, after the mis-selling of PPI and even endowment mortgages of yesteryear. As someone who found themselves, having bought a property leasehold, trying to get out of one of these managing agents, it is incredibly hard. It does take a lot of effort to extricate yourself from that agreement. I am slightly surprised; you are not relaxed but you seem to prefer not to mandate again in this situation, when I would have thought the evidence is increasingly strong that there needs to be strong



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intervention from Government.

Mrs Wheeler: It depends exactly on your lease and the type of property you had—I cannot get into that—but you can go to the property tribunal and change your managing agent that way. I need to choose my words carefully, but the chairman of the property tribunal, who we have had meetings with, is very keen to look at the evidence from leaseholders, to see whether a change is necessary, and will look at that as carefully as she can.

Q543 **Matt Western:** I understand, but in so many of these situations it all seems to be stacked against the individual, or in this case a small group of tenants who are sufficiently motivated and have the time or quasi-expertise or can access some expertise to get to the bottom of it. It is so hard, and making it simpler—that is, mandating it—would be a really positive thing to come from Government.

Lakhbir Hans: The Government set out a range of proposals in April on the letting and managing agent sector, which covered professionalising the sector and creating a statutory code and an independent regulator, which is what one of the other Members mentioned. We have set those plans out and that is currently being considered by Lord Best and his group. As the Minister said, once we get the recommendations from that group, we will consider them. There is a wider piece of work that we are doing within the Department, outside the Lord Best group, which covers the whole range of service charges. Within the team, we are looking at that. That will cover how we need to potentially strengthen or protect leaseholder funds as part of that.

Q544 **Chair:** Is the fundamental problem here that you have unregulated managing agents being appointed by the freeholder to look after the money of leaseholders who have no say in the matter?

Mrs Wheeler: That might be one way to characterise it, yes, Chairman.

Chair: I cannot think of another way.

Q545 **Helen Hayes:** We have received a lot of evidence of very high one-off bills being charged to leaseholders, often with limited consultation and short-notice demands for payment; for example, two leaseholders in London told us that their freeholder had authorised £600,000 of remedial work on their building, leaving each individual leaseholder with a bill of £50,000, which they were obliged to pay immediately or take out a high-interest loan. I have far worse examples from my own constituency caseload. What are Government doing to protect leaseholders from high one-off bills?

Mrs Wheeler: I have not seen that evidence. I would like to see that, please, and then I will be able to give you a better answer afterwards.

Q546 **Helen Hayes:** It happens all the time.



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Mrs Wheeler: I have not had a single constituent come to me about it. What can I say?

Q547 **Helen Hayes:** I am absolutely astonished to hear that.

Mrs Wheeler: Maybe it is a London thing.

Q548 **Helen Hayes:** I am sure that we will, as part of this inquiry, make sure that you have all that.

Mrs Wheeler: That would be very helpful. Just to be clear, is this public sector or private sector?

Q549 **Helen Hayes:** My next question is about public sector leaseholders.

Mrs Wheeler: We have heard more evidence on the public sector side, rather than the private.

Q550 **Helen Hayes:** We have substantial evidence of both—of unscrupulous practices in the private sector and, indeed, difficult circumstances in the social sector as well.

Mrs Wheeler: Obviously, any charges should be fair and transparent, and—dear me, what should I say?—it is an incredibly complex area of law, so we do have to be very careful. Again, to state the obvious, I am very glad you are doing this inquiry, and I am really glad that this evidence has come out. I can honestly say, as a constituency MP, I have never had a single letter about it in nine years, but that is another story.

Q551 **Helen Hayes:** The fairness and transparency of the charges is one part of the problem. The issue of payment terms is a separate but related part of the problem. We will make the evidence available.

Lakhbir Hans: The work I mentioned we are doing on service charges not only looks at the different types of charges, but will also consider the ways in which there can be redress or enforcement of rights within that.

Q552 **Helen Hayes:** We have also come across this problem in relation to social sector leaseholders. Often there is a tension there because tenants pay towards major works over a long period through their rents and service charges and are not hit with very large bills at very short notice. Often there is an issue within local authorities about them being fit for purpose in terms of the service that they are able to provide for leaseholders, in terms of providing information and so on, around procurement. Do you agree that public sector procurement rules and the extensive use of qualifying long-term agreements limit transparency, value for money and choice for leaseholders?

Mrs Wheeler: We have actually asked specific questions on this issue and we are garnering views on that. In the social housing Green Paper, we particularly asked for views on that. You will possibly be aware of the well-known Florrie's law, which started particularly in the social housing side of it. Florrie's law capped the service charges for major works in the social sector where it was underpinned by some Government funding at



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£15,000 in London and £10,000 outside, for social leaseholders. In cases of extreme hardship, social landlords may also waive or reduce service charges. When you are looking at charging excessive amounts for council property repairs and targeting the most vulnerable people, it can amount to a failure in the social landlord's duty of care. This is something that we have asked for evidence on and we are looking into.

Q553 Helen Hayes: I was going to come on to Florrie's law, introduced in 2014 for social sector leaseholders. We have again received evidence that it is, these days, completely ineffective because it does not apply unless repairs are partly funded by a central Government grant. You will be aware that there is very little central Government funding available for repairs and renovations of social sector properties currently, and freeholders can, in any event, circumvent it by undertaking repairs on a different programme at a different time from the part of the repairs to the building that are being funded by the grant. Do the Government have any intention to strengthen or extend the provisions under Florrie's law?

Mrs Wheeler: There are two things, really. First and foremost, social landlords have a wide discretion and, frankly, a moral duty, and I expect them to use it and set out affordable payment plans, or indeed waive some of the payments altogether.

Q554 Helen Hayes: Sorry, Minister. In a circumstance in which a social landlord has an obligation to undertake works to the building and has no other route to recoup that funding other than through the terms of its leases and through the rents that tenants pay, are you really suggesting that social landlords should simply waive the costs to freeholders entirely? If you are suggesting that, where should the funding come for those works?

Mrs Wheeler: I did not suggest that. I said that they have the ability to do that, particularly if there is severe hardship. We did go into this in the social housing Green Paper. The consultation on that closed on 6 November. We did receive a large number of responses on it. We are currently considering these, along with the findings from the eight engagement events that we hosted across the country. I did one up in Newcastle myself.

Q555 Helen Hayes: Do you think an equivalent of Florrie's law should be introduced for private sector leaseholders to limit or cap the level that they can charge leaseholders in major works bills?

Mrs Wheeler: We are looking into all the responses that have come in, and we will make an announcement on that in due course.

Q556 Chair: On the question of how you pay for work on a leasehold property, if the leaseholder does not pay, the only other suggestion you have said the authorities have the ability to do is to pay for it out of their rental income stream. Is that not ultra vires? I thought the HRA money could only be used for properties within the HRA account.



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Mrs Wheeler: It has to be proportionate across the two sectors, does it not—the rents and the leaseholders?

Q557 **Chair:** You cannot actually disproportionately charge the social rented properties to pay for something on the leaseholders.

Mrs Wheeler: The service charge and the sinking fund really need to look at the responsibility of the types of major event that are going to happen to a block.

Q558 **Helen Hayes:** But that would still be tenants subsidising—

Mrs Wheeler: No, the service charge is for the leaseholders. Tenants do not pay service charges, do they? Tenants pay rent.

Helen Hayes: Most local authorities do not operate a sinking fund. They just do not.

Q559 **Chair:** You cannot waive a cost to the leaseholder and take it out of the rent.

Mrs Wheeler: No, of course not. The HRA is ring-fenced, absolutely.

Q560 **Helen Hayes:** I want to turn now to the issue of redress. Leaseholders can theoretically challenge unreasonable service charges and one-off bills. However, we have received a significant amount of evidence from witnesses who are calling for a complete overhaul of the tribunal system, including the National Leasehold Campaign, which notes that it is “off-putting for many leaseholders, who fear the costs and legal jargon” and has an inherent imbalance of power. Would the Government’s proposal to introduce a specialist housing court be an opportunity to remodel the costs regime and review accessibility for leaseholders who might not have easy access to legal expertise?

Mrs Wheeler: That is a fair point. It is certainly something that we are looking at. We are not there yet because we want to look at all the information. I have sat down and had a meeting with my opposite number at the MoJ, and it was a very useful meeting about how courts tribunals can be made less scary and more amenable places to take issues. Equally, we have also asked trading standards to introduce new guidance, which was only published last week, so that it helps people understand their rights and responsibilities as leasehold property owners, including how to make a complaint if something goes wrong.

Q561 **Helen Hayes:** Do the Government envisage that their new Housing Complaints Resolution Service, announced last month, will have a role in supporting leaseholders in disputes with freeholders?

Mrs Wheeler: We certainly feel that there are opportunities there to improve the situation, improving the current position, whether of letting agents or of property managers in England. They must belong to a redress scheme. It is issues like that that we think, again, LEASE, in the initial stages, can help leaseholders with. That is where we feel that there is real room for improvement.



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Q562 **Helen Hayes:** How will the Housing Complaints Resolution Service be distinct from the current tribunal processes or the proposed specialist housing court? We are getting quite a crowded landscape of new Government proposals that all relate to an overlapping set of issues here in a way that could make the situation more complex and difficult to navigate.

Mrs Wheeler: We certainly do not want to do that, but we do want all managing agents to be part of a redress scheme. That would be the first port of call, but then ultimately there is the first-tier tribunal to go to.

Q563 **Helen Hayes:** Last month, the Government announced that they would keep all legislative options under review, including the option of a single housing ombudsman. Why have you now decided not to proceed with a single housing ombudsman?

Mrs Wheeler: Everything is still on the table. We want one portal—

Kevin Hollinrake: The Secretary of State said last week that there would be a single portal.

Mrs Wheeler: Sorry, that is it. I beg your pardon; I had literally just said those words. We want a single portal so that it makes it easier for everybody to start off the process, and then the appropriate person behind that front door will be the redress scheme that you use. Thank you very much for letting me clarify that.

Q564 **Helen Hayes:** Within the landscape of redress and the options that are open to leaseholders, the threat of forfeiture is a particular concern for many leaseholders who have disputes. In 2006, the Law Commission made recommendations about reforming forfeiture, referring to the tenant's uncompensated loss of a significant asset and possible windfall for landlords. It even supplied a draft Bill at that time, but 12 years on the Government still have not responded and this is still a significant issue for many leaseholders. Why not?

Mrs Wheeler: I do recognise that the fear of the threat of forfeiture can be deeply distressing. It is incredibly rare that it actually happens, and also it is after a very long court case. I am not saying it is three a year, but it is incredibly rare that it actually happens.

Q565 **Helen Hayes:** Could you provide us with statistics on that?

Mrs Wheeler: I do not know whether we keep the stats, but you read the newspapers like I read the newspapers, and I think I have heard of two court cases in the last year. We can see what we can find for you.

Q566 **Helen Hayes:** I am not sure that cases that make it into the newspaper would constitute an accurate documenting of the extent to which this is happening, so it would be helpful to know whether the Government know that it is very rare or whether the Government do not have that evidence.

Mrs Wheeler: Yes. We can see what we can find for you, with pleasure.



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Q567 **Kevin Hollinrake:** Just to go back to the point about a single portal for complaints, one option was a single housing ombudsman. Another option was a single portal that then redirected your complaint to the relevant ombudsman. Why did you decide to go for the latter rather than the overarching ombudsman?

Mrs Wheeler: In the short run, it was because the different groups of housing ombudsmen have specialties; we did not want to lose that speciality and that knowledge. Similarly, when you get to the ombudsman for the social sector, it is again a completely different group of people, with different skills, and we wanted to make the initial point of redress one portal: go there and then, after that, it will be dealt with by the appropriate groups. We want to keep an open mind on that, and we will review it when necessary.

Q568 **Chair:** It is slightly confusing. I found out the other day, talking to the Housing Ombudsman, that the Housing Ombudsman will take complaints from leaseholders in social housing blocks. I did not realise that. I have not seen anything from the Department about it.

Mrs Wheeler: No. I have certainly, as an MP, signed the appropriate ombudsman forms for my constituents and it has gone to the appropriate Housing Ombudsman.

Q569 **Chair:** For leaseholders. They told me that they would take complaints from leaseholders who live in a social housing block.

Mrs Wheeler: Right. That would make sense.

Q570 **Chair:** It gives one set of leaseholders a different access to a complaints process that is not available to any other leaseholder.

Mrs Wheeler: I must admit I personally have not had any of those, but if that is what you have been told, that is what you have been told.

Q571 **Chair:** Just to come back to forfeiture before I pass on to Liz, it is not actually about the number of cases that actually go to the point where the property is forfeited, is it? It is a threat of forfeiture that disadvantages the leaseholder.

Mrs Wheeler: Yes, I agree with you. It is a draconian piece of law, and obviously it should only be used as a last resort.

Q572 **Chair:** It should not be used at all, should it? That is the issue. Should it be taken off the table, as was recommended in 2006?

Mrs Wheeler: There are many changes to leaseholder situations, enfranchisement or whatever it is. Parliamentary time does not make it an easy place, or an easy space, and sometimes we have to make choices about what comes first.

Q573 **Chair:** I could make a comment about 12 years of parliamentary time, but never mind.



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Mrs Wheeler: It is a pleasure to spend this parliamentary time with you, Mr Chairman, by the way.

Q574 **Liz Twist:** I want to come back to fees. We heard a lot of information and a lot of evidence about permission fees, such as the £2,600, we heard in one piece of evidence, for permission to build a conservatory. That is before the conservatory was built. That was to be charged to one of our leaseholder witnesses. We have heard calls for those to be banned. Do the Government agree that these fees should be banned, or at the very least capped?

Mrs Wheeler: I was stuck, personally, by the evidence that I heard at my stakeholder meeting last week, regarding, in effect, changing from leasehold to “fleecehold”, where you have a lease on a house on an estate, and the permission fees in it were absolutely astonishing. I certainly would want to look at the freeholders: not just doing away with whatever it happens to be on the onerous ground rents, but changing completely the issue about permission fees. Those are even more onerous duties on a lease. The next time we are meeting with the freeholder stakeholders, that is something that I want to push on.

Q575 **Liz Twist:** It is obviously a major concern for lots of people, especially in the newer-build houses, but other people as well, that they have to pay these fees to do something to their own house, when it looks like it is money for nothing. How are the Government going to take this forward?

Mrs Wheeler: There is space here. When you have an existing contract, I cannot unilaterally change that contract. I cannot do it, but what I can do is encourage a much better voluntary agreement and encourage a much better take-up from that voluntary agreement. Equally, I have heard directly issues over permission fees to have a dog and permission fees to change the carpet; that is absolutely ridiculous. We will be eyeballing the freeholders to say, “This is just not acceptable.”

Lakhbir Hans: Can I just add to that? I mentioned the service charges work—I keep coming back to this—which is a massive area that we are looking at. We are going to be considering in what circumstances some of those fees and charges might be capped or banned. That might include the use of restrictive covenants, leasehold restrictions, administrative charges or other charges placed on properties.

Q576 **Liz Twist:** Do you have a timescale for that work? I know, Minister, you said you would be eyeballing the freeholders when you meet them on this issue, but is there a timeframe for work to be done? People are getting really angry—“wound up” is not a strong enough term—that they have to pay these things just to improve something or to, as you say, have a pet.

Mrs Wheeler: Again, that comes back to the original legal advice they had when they bought. It is just incredibly difficult to believe that 13 pages setting out where permission fees would be charged, somehow or other, did not hit home at the time. I do urge anybody who felt that whatever legal advice they had was glossed over, or whatever it might



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be, to go to the SRA about it. As regards time, summer this year is when Lord Best will reply to us with his recommendations.

Q577 **Liz Twist:** Can we define "summer"?

Mrs Wheeler: End of July, I think.

Q578 **Liz Twist:** We look forward to the heatwave at the end of July and the publication of the report, because this is something that is really exercising—

Mrs Wheeler: Totally. I could not agree with you more.

Q579 **Liz Twist:** From what you were saying, Minister, what you are looking at is getting people to voluntarily agree that these are not right. Is there nothing further that the Government can do?

Mrs Wheeler: It would need legislation because it is a contract between two people, and I cannot change that contract. If the freeholder is willing to change that contract, write to the leaseholder and explain that they are willing to change it, and you buy into that, in whatever way it is, that is the way forward.

Q580 **Liz Twist:** The Conveyancing Association told us about some of what they described as increasingly abusive practices by lease administrators, including very high fees for routine and often very pointless tasks. The Government said last April that it was keen to introduce a cap for such fees and would investigate the best way in which this could be done. Have you decided what you are going to do on that yet? Will you be deciding?

Mrs Wheeler: No, we have not decided yet. That is still work in progress. I am looking to see the evidence from your inquiry and also the work that the Law Commission has been doing for us.

Q581 **Liz Twist:** I think, Minister, that probably a lot of leaseholders listening might be a bit disappointed that we do not have a clearer timeframe. It would be really helpful if we knew more about the Government's intentions as soon as possible.

Mrs Wheeler: As soon as I can make a statement, I will. You are quite right. It is disgraceful that this new model of doing business ever came to the fore, and I am really pleased with the very strong announcements that the Government have made and that the number of these new houses that particularly have these onerous permission fees and things like that has reduced substantially. That is something to be grateful for, but we have to hone down on the ones that are left.

Q582 **Chair:** Just on the issue of the contracts, before I pass on to Bob, have you taken any advice about whether some of these contracts are so unreasonable that they actually might not be valid contracts?

Mrs Wheeler: No. Whether that comes out in the Lord Best review, I do not know, but I personally have not had advice on that matter.



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Lakhbir Hans: The Law Commission is doing a bit of work for us on unfair terms, so we can consider it as part of that.

Q583 **Chair:** That is being done, is it, and will be published in that work as well?

Lakhbir Hans: Yes. They are looking at that.

Q584 **Chair:** That will be published, will it?

Lakhbir Hans: Yes.

Mrs Wheeler: Eventually. They are leading into it.

Q585 **Chair:** What is the timescale for that?

Lakhbir Hans: I will need to check.

Chair: Can you let us know that? Thanks.

Q586 **Bob Blackman:** It is fair to say that there are mixed views of the Leasehold Advisory Service. One complaint we have from a disgruntled individual said the service was “honestly, quite appalling”. The all-party parliamentary group on leasehold and commonhold reform has called for reform or replacement of the service. Others have said that, actually, people do their best with what they have at their disposal. What is the Government’s view of the condition of the Leasehold Advisory Service?

Mrs Wheeler: Our view is that LEASE was losing its way. It needed a new, strong chairman, and we have appointed Wanda Goldwag—what a great name—to take the chairmanship. If any of you have met Wanda, she is not to be trifled with.

Q587 **Bob Blackman:** At the moment, one of the criticisms that is made is that there is no leaseholder representation on the board. The Government have the power to actually appoint people. Why have the Government not appointed any leaseholders to the board?

Mrs Wheeler: I do not know the straightforward answer to that. We have had two resignations from the board. I do not know whether one of those was a leaseholder before, but I will be appointing people to the board in the next six months or so, as quickly as I can, and I will bear that in mind.

Q588 **Bob Blackman:** Will you give the undertaking to at least look at the aspect of having a leaseholder representative on the board, to give the customer perspective on the service that is being provided?

Mrs Wheeler: That is an interesting question. The vast experience that there is in that group—I want to call it a company, but it is not a company; it is an arm’s-length body—knows that their No. 1 day job is only dealing with information about leases. We obviously have the strength of depth in the group. It also does about cladding, and it also does mobile homes. I am not sure that I feel the necessity to put a



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mobile park homeowner on the board. We need to be a little bit careful what we wish for.

- Q589 **Bob Blackman:** The clue is in the name: Leasehold Advisory Service. Therefore, surely there should be a representative of the people who are seeking advice from them from the customer side. I am not saying you have to appoint anyone. Obviously, it is in your gift. Will you at least take it away, look at it and say, "Possibly this is something that we should do, to give a better balance and a broader feeling on the board."?

Mrs Wheeler: I will talk to the chairman because she will have a view on this matter, I am sure.

- Q590 **Bob Blackman:** That is fair enough. They have recently been given an additional £465,000 to provide free initial legal advice to leaseholders affected by fire safety issues, which you have mentioned. What advice should they be giving to leaseholders who have suddenly been landed with very large bills to replace unsafe cladding on their buildings?

Mrs Wheeler: This is a really horrendous situation, and the responsibility for making the building safe does lie with the building owner. We have repeatedly made it clear to building owners that they should do all they can to protect leaseholders from these additional costs. You will know that the Secretary of State has met with the financial institutions, insurance people and the freeholders, and there is some really good up-take from particular freeholders who are not passing these costs on to leaseholders. We applaud those freeholders for doing the right thing. LEASE will be helping leaseholders who have these bills straightaway, to point them in the right direction of where they need to go to say, "No, freeholder. That is up to you, and it is up to your insurers behind you."

- Q591 **Bob Blackman:** The drawback of this, obviously, is potentially you are talking about someone who has bought a leasehold on a flat. It may have been the first time they have bought a flat. They may have been in the flat for a little while. They cannot sell the flat because basically it is zero value, because everyone says it is unsafe, and then the freeholder says, "Well, actually, we cannot afford to do the building and do what we should do. We are going to pass the bill on to you, and you have to either take another loan or alternatively suddenly find a wodge of money to pay this bill." If you are in that position as an individual, you need some pretty clear advice quickly, do you not? LEASE has been given this money to make sure that that advice is given. How strongly do they need to advise people about their legal rights?

Mrs Wheeler: That is what they are there for. They are there to protect the leaseholders. The leaseholders need to, with that advice, push back on the freeholder that they need to look at their insurance, their warranties and make claims there. It is not for the money to be passed on to the leaseholder.

- Q592 **Bob Blackman:** Kevin has highlighted some very complex arrangements that may exist, particularly around absentee freeholders. What happens



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there?

Mrs Wheeler: The absentee freeholders will still have insurance and so they have to push back on that.

Q593 **Bob Blackman:** You hope.

Mrs Wheeler: Yes.

Q594 **Bob Blackman:** At the end of the day, what matters is making these buildings safe and making sure they are done quickly. The evidence that we have had is that, particularly in the private sector, there is very slow progress on the removal of unsafe cladding. Even when it is not ACM cladding, the number of buildings that are not ACM has also dramatically increased, which potentially runs the risk of huge numbers of leaseholders being passed a bill and then the freeholders saying, "I do not think I have the legal obligation to do this, but if you want it done, here is the cost."

Mrs Wheeler: Mr Blackman, you will recall that the Minister, Kit Malthouse, had a debate about this urgent question about a week ago. It would be useful to take that up with Minister Malthouse.

Bob Blackman: Okay. I was there, yes.

Q595 **Kevin Hollinrake:** Just talking about enfranchisement, so buying a freehold or extending your lease, we have had quite a bit of evidence from leaseholders that, because of your initiative making things easier, quicker, cheaper or more cost-effective—whichever term you want to use—some are now thinking, "Should I wait? Should I try to extend the lease term now, or the buy the freehold now, or would I be better off doing that in a few months' or a year's time?" What would you advise them to do?

Mrs Wheeler: Very sadly, I cannot advise them because everybody is in an individual situation. The work only closed on 7 January and so we are looking into the results from that afterwards. We do want it to be fairer, we do want it to be more transparent and we do want it to settle on both sides as a fairness. Freeholders do not wake up in the morning and think, "I am just going to give it all away," do they? It has to be a reasonable way forward. Everybody's situation is completely different, and it would not be appropriate for me to say, "Wait two years."

Q596 **Kevin Hollinrake:** Even if you could afford to enfranchise, lots of leaseholders just cannot afford to do it. Even if the cost of buying the freehold or extending the lease was a sensible figure, lots of leaseholders just do not have the amount of money that it might take; it is tens of thousands of pounds in some cases. Would it not be fair, sensible or possible for the Government to provide some kind of low-interest finance to be able to enfranchise?

Mrs Wheeler: Are you really asking me that question?

Kevin Hollinrake: Yes. Give us an honest answer.



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Mrs Wheeler: The honest answer is the Government are committed to reducing the premium price that leaseholders must pay to extend the lease to buy their freehold. That is going to be the answer you are going to get.

Q597 **Kevin Hollinrake:** You are not planning something more innovative, like some kind of finance capability to do that?

Mrs Wheeler: I have not found £2 million down the back of the sofa yet, I am afraid.

Q598 **Kevin Hollinrake:** That is a “no”, then. In terms of enfranchisement, of course, there is a formal, statutory route and then there is another methodology, which landlords sometimes prefer, which is you get into an informal negotiation with the landlord. In the latter route, you can sometimes be a lot worse off than going through the statutory route, which is actually a pretty cost-effective way to do it, but there is no requirement for the landlord to tell you there is that option.

Mrs Wheeler: Good. I am really glad you said that because you are quite right. All leaseholders can ask for a determination at the first-tier tribunal if they think that the price that they have been asked by the freeholder to buy the freehold is too much and an agreement on a price cannot be reached, if it is a mutual conversation. The tribunal will ensure a fair market price is paid for the freehold, so that provides reasonable compensation to the freeholder. Again, your inquiry is most welcome to get the information out there that leaseholders can go to the tribunal and strike a fair price between the leaseholder and the freeholder.

Q599 **Kevin Hollinrake:** That is good, but there is another way to do that, is there not? If I go to my friendly landlord and say, “Actually, I want to extend the lease or buy the freehold,” they might enter into negotiations, and I might think it is quite reasonable and just go do it, but, actually, I could have gone through the statutory route, which lets me extend for 90 years on a peppercorn ground rent. There is no requirement for anybody to tell me that option is available, if I do not know about it.

Mrs Wheeler: We are also updating our “how to rent”, “how to buy” and “how to lease” guides, and we must make sure that that is in there.

Q600 **Kevin Hollinrake:** Yes, that is one thing, but you would think there would be a statutory requirement, if I am going into that negotiation, if I am extending that lease or buying the freehold, for somebody to tell me, “Actually, have you thought about doing it this way as well?” I might not have read the “how to rent” guide. I might not have had it given to me at the time. It is one thing having a guide; it is another somebody pointing me to that option, because I might not know about it.

Lakhbir Hans: We need to wait until the Law Commission recommendations come through and see what that looks like in terms of the process.



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Q601 **Kevin Hollinrake:** It might be something that we might want to flag up, because it does seem sensible. Lots of people pay too much to do this when they could go through a much more affordable route. We have had that evidence given to us by leaseholders and by their advisers.

Mrs Wheeler: That is very helpful, thank you.

Q602 **Kevin Hollinrake:** The flip side to this is that if you make it too cheap, of course, to do that, people with existing interests in these blocks that I mentioned earlier, for example—the complex blocks—which you could argue still need somebody with a commercial interest, might be deterred from getting involved at all in this sector. You might deter professional landlords from being in this sector in the first place. Is that a concern?

Mrs Wheeler: We do not want good professional freeholders exiting the market. We have not heard, as a specific threat, that they would do that. The law that changed about enfranchisement was a very welcomed law. It got massive coverage when it came in. Freeholders now know that it is a consequence of doing business in the future. It is the usual thing, isn't it? It is a matter of personal choice. Not everybody is going to want to do this, and getting everybody together in a block to take it forward is a big undertaking.

Q603 **Chair:** When the relevant Law Commissioner, Professor Nick Hopkins, came to give evidence, what he said, and it was quite striking, was: "I would say the legislation we have that governs residential leasehold as it stands is not fit for purpose". Would you agree with that?

Mrs Wheeler: I agree that we have asked the Law Commission to look into lots of things for us. Again, I thank you for your inquiry. We have had a consultation out, and we have Lord Best looking at things. We need to look at all this in the round. It underlines, yet again, what a complex area of law this is.

Q604 **Chair:** That is the point he was making, and others made as well: what the Government have been doing is identifying individual, particular problems with leasehold and asking for consultation papers and reviews, when what is actually needed is wholesale reform.

Mrs Wheeler: We get back, then, to parliamentary time and what is doable. I would rather get a number of things on the statute book, through the next Queen's Speech, that make real improvements as soon as we possibly can, rather than wait three, four or five years, so that no changes happen to all those people who are in leasehold houses, which none of us ever thought should ever happen before, or rather you put that at risk. If you delay the fairer, faster, cheaper enfranchisement, that would be put at risk as well. I do not want to do that.

Q605 **Chair:** Before I ask a follow-up question, that was not a promise to bring this legislation in the Queen's Speech next time, was it?



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Mrs Wheeler: I am saying that when the Law Commission finishes and I have the great pleasure of reading your report as well, would it not be nice if we did?

Q606 **Chair:** What the Law Commission was actually saying to us was that what they really wanted was a remit from Government to do a comprehensive review of everything to do with leasehold. You should not necessarily put any immediate reforms on hold—it may be that their review of a comprehensive reform will take a couple of years for them to do—but at least is that not something we ought to be aiming for, and recognise that just bits and pieces here and there is going to lead to, in the end, probably to some important reforms but also many complications as well?

Lakhbir Hans: The fact that the Law Commission is doing a huge amount of work in this area is an acknowledgement that we recognise that the system does need changing. The Law Commission work is something that we are supporting. There is the enfranchisement work—Professor Nick Hopkins said that it was 50 Acts of Parliament and 450 pages' worth of legislation, and that is only part of it—as well as all the work around right to manage and commonhold. All these are parts of the system that we are trying to change and that they are taking forward. Clearly, there are other things that we could do, but we need to see how all the pieces fit together. Once we see that, we need to look at what else needs to be changed.

Q607 **Chair:** That is what the Law Commission was saying to us: they need to step back and look at the whole, not the individual parts. So far they have not been asked to do that, have they? They have been asked to look at individual parts—they are important parts, and important proposals are coming from it—but why not also say, "Okay, we are doing this, but over the next two, three or four years, even, we need a comprehensive review of the whole leasehold legislation and the whole area. Let the Law Commission get on with it." It needs the Department to commission that to provide the funds to do it.

Mrs Wheeler: We will take that away.

Q608 **Chair:** In terms of the work the Law Commission is doing, then, on enfranchisement and commonhold reform, I suppose I might be optimistic to want to get a commitment to respond quickly and act on the recommendations when they come.

Mrs Wheeler: On commonhold reform?

Q609 **Chair:** I think you are asking them to do work on enfranchisement and commonhold, are you not? Do we have an indication that you would be prepared to act quickly when you get that information and that advice?

Mrs Wheeler: Subject to parliamentary time, yes, absolutely.

Chair: As soon as parliamentary time allows?



Mrs Wheeler: Yes. It is probably un-*Hansard* to say, "Bring it on!"

Q610 **Chair:** I will quote that, Minister. That is memorable. Thank you for that. Finally, National Trust properties have been the subject of some of the particular information and evidence that we have had. The National Trust has just written to us, actually, explaining the particularities of the situation with regard to leases on their estate. I do not know whether you have had a chance to look at that yet—maybe it is too soon because literally we have just got the letter in the last few days—and to think about how you regard that in terms of the National Trust's particular place in legislation, and whether you feel that the letter we have had deals with any concerns that you might have.

Mrs Wheeler: I will not say the National Trust is unique, because there are some other charities that are slightly difficult as well, but it is complicated. They can extend leases, but because of where some of the donations have been made to them, it is an inalienable right that they cannot give a freehold. They just cannot do it because of how the property was given to them in the first place. Sometimes with National Trust people buying them, I do not know that they quite take that on board, which has made it very difficult. The National Trust also in the past has been very strong in how much they want to charge for those extensions of leases, and that has caused a problem as well. Again, it goes back to the reason they have the property and how they need to make enough money to keep that property going forward—in terms of the bigger-picture property, not just the lodge at the gate—and to look after the big property. It is a very difficult problem. I know there are three or four other areas where similar problems arise, but it is almost unique.

Q611 **Chair:** They have exemptions in the Leasehold Reform Act 1967 specifically for the National Trust. Are you thinking of any changes to those exemptions?

Mrs Wheeler: In the short term, I cannot see how we can, because of the rights that they had, in terms of how the properties were handed over to them in the first place. It is very difficult. Some other charitable groups have this nuance as well. We are talking to the Charity Commission about other issues where we might be able to see if there is any way of loosening this, but it is a very difficult situation.

Q612 **Chair:** Presumably you will have a look at that letter we have received from the National Trust and let us have your comments on that?

Mrs Wheeler: Absolutely. We are happy to do that, Chair.

Q613 **Chair:** Thank you very much, Minister, for coming to answer our questions today.

Mrs Wheeler: It was an absolute pleasure. Thank you very much.