

Oral evidence

Taken before the Communities and Local Government Committee

on Monday 5 March 2007

Members present:

Dr Phyllis Starkey, in the Chair

Mr Clive Betts
John Cummings
Martin Horwood
Anne Main

Dr John Pugh
Mr Bill Olnor
Emily Thornberry
David Wright

Witnesses: **Mr John Paterson**, London Leaseholder Network, and **Ms Pauline Walton**, Chairman Designate, Norwich Leaseholders' Association, gave evidence.

Q1 Chair: Welcome to this afternoon's session, which is a one-off session on the issue of leasehold and major works. I apologise for starting slightly late; the private business that we had took slightly longer than intended. Would you introduce yourselves, and then I will start with the questioning? Do not feel obliged, both of you, to answer every question unless there is something specific that you can add from your different experience.

Ms Walton: I am Pauline Walton, from the Norwich Leaseholders' Association. I am Chairman Designate.

Q2 Chair: The microphones do not work tremendously well unless we lean forward slightly, and this room is quite difficult for people to hear, particularly the people behind, if you are not amplified.

Mr Paterson: I am John Paterson, representing the London Leaseholder Network.

Q3 Chair: Can you each give an estimate of what you think is the range and extent of the burden on the people that you represent of major works charges?

Mr Paterson: The range and extent is very difficult for us to estimate because we do not have the resources to do our own investigations, so we have to rely on other evidence. We have the Commons research paper 99/36, which was published in 1999, looking at right-to-buy issues; and it concluded that the evidence that had been supplied by local authorities suggested that they rarely spent more than £7,500 per property over a period of 10 years, which would suggest that very few people would be affected by these big bills.

Q4 Chair: Mr Paterson, we would like to know the feedback you are getting from your members.

Mr Paterson: The feedback we are getting—there is an estate in Camden where they recently went to the LVT to seek a dispensation from consulting with leaseholders where they have stated that the spend on each flat to refurbish it will be £109,000. I have been reliably informed that this has now risen to £154,000 per flat.

Q5 Chair: Can you give the clerks afterwards the detail of which development it is?

Mr Paterson: Yes, the Chalcott estate in the London Borough of Camden, it consists of 750 flats of which approximately 100 are long leaseholds.

Q6 Chair: Is that an extraordinary example, or have you had others?

Mr Paterson: Not necessarily extraordinary. It is a key decision because the Council has been aware since 1999 that extensive works were required, and there have been disputes between the Council and the Treasury about how this might be funded; and it has taken six years. Initially, in 1999, the Council estimated £47,000 per flat, and the Housing Minister at the time told the Council that they should apply a cap on that and cap at £10,000.

Q7 Chair: Is that the only example you have?

Mr Paterson: No.

Q8 Chair: Give us one or two others, very briefly.

Mr Paterson: There is an estate in Westminster, the Warwick Estate, where it is proposed to spend £58,000 per flat. There are several.

Q9 Chair: It might be better to give the clerk specific detail afterwards.

Mr Paterson: There was an estate as far back as 1995. We saw this in a block of flats in Camden—leaseholders received section 20 estimates for over £100,000 per flat. The actual costs, once the work was finished, rose to £200,000. There is increasing evidence that if the Councils start to do all the works recommended by Government—I looked at a previous report of the previous ODPM Select Committee, and it suggested that—

Q10 Chair: Mr Paterson, I do not want to be difficult but—

Mr Paterson: Evidence suggests that if other proposed works are included—the costs will escalate.

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Q11 Chair: Mr Paterson, can I just explain that we have access to all those reports. We have asked you here to give us information that you have, which we will not have from other sources. Can I ask Ms Walton if she can add to it, because this is not just a London issue?

Ms Walton: The answer to your question is that I cannot add to it for a couple of reasons. One is that I do not think that the true extent and scale is available. I do not think anybody actually knows nationwide what the situation is.¹ In Norwich I certainly do not. Second, one of the reasons I do not know in Norwich is because I do not have access to my leaseholders except through the council, and that is only very limited access. They have told me that I cannot have the names and addresses of the leaseholders for Data Protection Act reasons. What I can say, which might be helpful, is that I believe we should worry most about the poorest leaseholders who will tend to be resident. They will tend to live in estates or tower blocks, as well as others of poor construction. They are likely to be first-time buyers or ex-council right-to-buy. That is my belief because properties situated amongst predominately welfare housing areas have the least value on the market.

Q12 Chair: Is part of your concern based on a worry that in the future, knowing the repair costs that councils are involving themselves in, leaseholders will be landed with these costs; or do you have actual examples, apart from the ones Mr Paterson has already mentioned, of leaseholders who have been having very large costs?

Ms Walton: I have examples of leaseholders who have large costs. The costs are larger in the social sector than they would be in the private sector; I think that is a fairly common belief.

Q13 Chair: Can you give a rough estimate?

Ms Walton: Double—up to double—

Q14 Chair: No, the amount that is being charged—

Ms Walton: I cannot. I do not have that information.

Q15 Chair: Are we talking of £2,000, £10,000, £20,000?

Ms Walton: All of those. The other point is that I do not want you to be hearing about these huge figures of ten thousands, twenty thousands and thirty thousands and have that mask the fact that leaseholders all over the place are actually suffering much smaller injustices; but they are suffering them nonetheless. Just by getting rid of these headline ones does not mean the problem goes away.

Q16 Emily Thornberry: You just said that the council tenants were suffering twice as much as the private ones. Do you have information on that, or is it just anecdotal?

Ms Walton: It is anecdotal, but I do know that when you have got large-scale type works which result from leasehold type tenure and the landlord owning all of that property, they are going to manage it on a much larger scale, and so they have to go to the European Union and they have to have special—they are also looking at 30-year lifetime guarantees and that kind of thing, which is imposed by government. I think all of those things tend to mean you have to have more highly trained consultants to tell you what kind of thing you have got to have. All of that ends up being a lot more expensive in the social sector. That is my understanding, and it is my belief; that is all I can say.

Q17 Mr Betts: Would that not be known when someone went to buy the property in the first place? Do they get any advice from the council about how the property was to be managed and maintained? Do they seek any advice? I do not think any of this will be new to people, looking at how council houses have been managed for the last 25 years.

Ms Walton: I am an experienced home-buyer. I am a landlord leaseholder. I have bought many houses in my time. I have bought leasehold through the council. My perception was that in the lease it said the Council have to keep these properties up to scratch. My perception was that the council did; that I would be buying a property that was properly maintained. I knew that I might not get economies of scale, and I was prepared to pay a little bit over the odds, but, frankly, I have been shocked. In Norwich the RICS percentage is what we get on the contract from the contractor, Lovells, and that will be anything up to 12%. On top of that, the Council is proposing to charge 6.15% as an overhead, on top of the cost of the contract of the work you are doing. I could not possibly have known that before I started. I did not know, when I looked at my lease, what impact the Government was going to have on what the landlord was going to do. I had no idea. How could I possibly know? How could a lawyer know that?

Q18 Chair: Ms Walton, do you lease several flats that—

Ms Walton: Yes.

Q19 Chair: Do you occupy any of them?

Ms Walton: No, I am not a resident leaseholder, which is why I have come across a lot of the residents—I was so shocked. When I first went into this, I went along to a meeting of the other leaseholders, and there was a lot of hysteria in there, and I was really shocked by the way that they were coming across. Gradually, I started listening to them, and I realised there was serious, serious injustice here, and for the people who really . . .

Q20 Emily Thornberry: The headline figures you talked about, the hundred thousands—and I know of fifty thousands and sixty thousands in Islington—do you have any experience of any leaseholders

¹ However, Communities and Local Government report 1.7 million Right to Buy sales in England by 31 March 2006. I believe we have a reasonable understanding of London leaseholders who number only 286,000.

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successfully challenging those bills, either through the Land Valuation Tribunal or through other ways?

Mr Paterson: No, not for large bills at all. General experience of leasehold valuation tribunals is that they tend to be possibly trying to give a bit to either side and you might get a limited reduction in the bills, but it is very unusual for the bills to be reduced by much; except such as the experience at Islington where the capping regime has been applied. That is the only mechanism that seems to be available to deal with some of the larger and possibly more unreasonable bills.

Q21 Emily Thornberry: In relation to Islington, the capping regime has not been applied. There was a bit in terms of the EC1 new deal area, but there has not been any capping regime. There is a land valuation—

Mr Paterson: The PFI cap.

Q22 Emily Thornberry: Yes, the PFI cap has been applied. In relation to the land valuation tribunals you say there have been some partially successful ones. Can you give any particular examples of that?

Mr Paterson: I could give you particular examples, but I have grave concerns that the the lease in the public sector is not properly applied. I think in order to recharge for major works the landlord should first satisfy itself and the leaseholders that the works are necessary, and that means “necessary” under the terms of the lease, not necessary for the delivery of public services; that the actions proposed will just deal with the defects in the property and no more; that there will be reasonable costs. Basically, it seems to me, from general experience, that landlords are simply imposing works regardless of the necessity, and quite often there are very common issues like replacement windows for double-glazing. That is a very common repair that is carried out. The landlords will say they are doing that in order to comply with their obligations under the Home Energy Conservation Act, and this will help to reduce energy consumption . . . Basically, there is nothing in the lease that says they must carry out such works; and in fact these kinds of works are public works. They are not works that require service charges under the terms of the lease; and this is what is contributing to the majority of these big bills.

Q23 Chair: In relation to the larger bills that leaseholders are getting, is it your experience that they tend to be on high-rise blocks, or not?

Mr Paterson: No. I gave you the example of the £100,000 estimates in Camden in 1995 and that was for a mansion block—25 flats in Finchley Road. There was a mixed block of freehold properties and low-rise leasehold properties in Bullsmoor Way Estate in LB Enfield in 1998 it cost approximately £80,000 per property to deal with the defects in them. They were system built. I have seen evidence from leaseholders in Manchester, living in cottage type four-in-a-block properties, possibly facing £35,000 bills. The high-rise is the problem because there are

specific reasons why local authorities prefer to refurbish high-rise rather than consider demolishing them, and this often incurs a very high cost. We have fewer high-rise buildings available in local authorities now, so it is becoming less of a problem.

Q24 David Wright: You mentioned section 20 of the Act and the requirement to consult for works above £250, although there seems to be evidence that people try to wriggle out of that. Do you have any experience of proper consultation, good examples of consultation and planning in terms of works, and how do you think the system could be improved? How could we use this system more effectively to plan works and phase works so that people feel they have an input?

Ms Walton: The first thing to say is that section 20 consultation does not apply to the landlord to do anything about any comments that leaseholders give; so we are starting from that point of view. My understanding is that the procurement guidelines say that all those involved should be involved from the word “go”; so leaseholders have to be considered from the outset. All of these things that have come up now should have been expected. It is obvious it was going to happen, if anyone had sat down and thought about it. If there is a government initiative, then leaseholder impact should be looked at there; if there is a local initiative—and it should be carried through; there should be a local person offering advice on local impacts as well. I also think that the individual leaseholder should have the opportunity also to change those works, maybe under certain guidelines because by that time it has been thought about—but it is possible that they may throw a spanner in the works which would change things.

Q25 David Wright: Is there anywhere you could mention that has got a particularly good practice example that we could take some evidence from?

Ms Walton: I cannot exactly say that, but I can say that in Norwich I think they are heading in the right direction. I was personally involved in the start of a framework agreement, and there were only four of us involved in that process, and another one was a tenant. We selected the contractor, and I have just attended the first strategic planning meeting. I just think that is terrific. On the other hand, we have got the Digital Switchover project, which was going to be done without consultation because it was below the Section 20 consultation threshold. The reason it was below the threshold is because the cost will spread over 10 years and we were going to be charged £3 million over 10 years, which I think is overpriced. I understand that landlords actively use this approach to get around Section 20 consultation.

Q26 Mr Betts: Obviously, you may have very reasonable grounds for objecting to some of the works and some of the costs. There will in the end be other works that are absolutely necessary for the maintenance and improvement of the blocks. It is equally very reasonable that they should be shared between people, but there may be people who cannot afford to pay their share. Do you think mechanisms

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like sinking funds, equity release, tax-exempt savings accounts, are ways in which it might be possible to help people who cannot otherwise afford to pay their share?

Ms Walton: It is a difficult one. If someone cannot afford to pay, then they owe the money and you have got to find a way. What I really think is that if a leaseholder is informed and knows what they are going to be up against before they start, then one would hope that they would take a judgment at the beginning either not to buy or to buy. It would be really useful for somebody buying a leasehold property to know that actually over the last 10 years (or more if possible), this is the averaged monthly service charge. You do not have that information; it just is not there—maybe the last five years and the next five years projected—whatever. In answer to your question as to things to help, for every lease property there is, there is a different person and a different solution. I quite like the idea of a Credit Union. I think a sinking fund could work. I am not 100% sold on sinking funds.

Q27 Mr Betts: A sinking fund would do two things: first, it would mean somebody cannot be in the property for 10 years and not think about the problems, or somebody asking them to think about the problems, because they start saving towards them. Second, if you have a sinking fund established, when someone buys they ought to be aware of it, and they ought to have some idea of the likely ongoing maintenance costs.

Ms Walton: I think there are other ways of making them aware of it. I am in favour of having somebody who is an adviser locally, whose job it is to make sure leaseholders are properly informed. Most of these people—it is their first step on the ladder of responsibility, and if you start making them do these things—it is a bit patronising, do you not think? That is how Norwich leaseholders feel.²

Q28 Mr Betts: What about equity release?

Ms Walton: Yes. I think any and all of them.

² I have since put this question to the NLA AGM and the leaseholders agreed unanimously that they wanted options not enforced solutions.

Mr Paterson: I think if they itemise the problems and identify the impact of these excessively large bills, which are not experienced in the private sector, then the means of tenants would become less of a problem. Equity release basically—the experts—which is the Council of Mortgage Lenders have already rejected proposals for plans to introduce such schemes—some London councils have already annually applied 500 applications for money judgments against leaseholders. These are usually granted. The council then applies to the mortgage lender who adds the sum to the mortgage. Basically, for how long can the mortgage lenders continue to bale out the bill on the basis of equity? It cannot go on for ever. To make it a sustainable project, it would require a government to continue to follow a policy that would encourage house price inflation, and I do not think that is a very good objective.

Q29 Mr Betts: Are you aware of any examples where the people concerned have not got sufficient equity in their property to cover the bills they have been presented with?

Mr Paterson: Yes, lots of them.

Q30 Mr Betts: Can we have some examples of that?

Mr Paterson: People come in, as first-time buyers into the market. They are over-extending themselves to be able to get a foot on the ladder. They have effectively nothing in terms of equity. People who bought through the right-to-buy have actually raised moneys through the equity to make their own homes decent. They have already spent a lot of equity doing things like that. Some also have used possibly that equity to oversee education of the family and stuff like that, to get their children on to the property ladder. There are lots and lots of examples. Just because prices have risen, it does not mean that all are asset rich— it has come to a stage for many of these people that they are reaching the limits of borrowing. They may have additional equity in their properties, but they do not have the means of paying it back. Their income would not support any more demands on the equity.

Q31 Chair: If we get the clerks to come back to you, Mr Paterson, on specific examples, that would be tremendously helpful. Thank you very much indeed.

Witnesses: **Mr Anthony Essien**, Principal Leasehold Adviser, LEASE (Leasehold Advisory Service), and **Mr John Bryant**, Policy Leader, Neighbourhoods and Sustainability, National Housing Federation, gave evidence.

Q32 Chair: Can I ask you to briefly introduce yourselves?

Mr Essien: My name is Tony Essien. I am the Principal Legal Adviser of the Leasehold Advisory Service.

Mr Bryant: I am John Bryant; I am a policy leader at the National Housing Federation.

Q33 Chair: The National Housing Federation speaks on behalf of?

Mr Bryant: We are the trade body for housing associations, and obviously leasehold is a significant part of our work.

Q34 Anne Main: Mr Bryant, some councils—and the London Borough of Hammersmith and Fulham for example—suggested that the average bills are going to rise as a result of the decent home programmes, and they have given a figure of £10,000. Do you share this view?

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Mr Bryant: I should not like to put a figure on it, but I think it is inevitable that Decent Homes will have an impact on the level of charges, though I would stress that this issue of leaseholders and high service charges would be a significant problem even if the Decent Homes programme did not exist. It certainly adds to the problem. I could not put a figure on it.

Q35 Anne Main: You cannot put a figure. Would you say how much percentage it might add to the bill then?

Mr Bryant: I do not think I could offer a figure, I am sorry.

Q36 Anne Main: Taking that one step further, our previous witnesses mentioned double-glazing and that those were not part of the lease. Can you think of reasons why the bills would have risen then?

Mr Bryant: I think there has been a general, well-attested increase in construction-related inflation in recent years that has affected all types of building projects, and it has naturally had an impact on this one as well. The existence of government improvement programmes such as Decent Homes is a factor. Probably the biggest single factor is long-term under investment in a lot of this stock, and from the point of view of housing associations I think particularly of stock transfer housing associations that have taken over stock from local authorities. I think the chickens are coming home to roost in terms of the long-term lack of investment in a lot of this property, and works are now becoming pressing and in some cases are unavoidably very expensive.

Q37 Anne Main: Can I ask you to expand slightly on that? It would be long-term investment in those properties. Is it something to do as well with some of the construction methods that were previously used in those properties? Are those making it disproportionately expensive?

Mr Bryant: Yes, in many cases.

Q38 Anne Main: Mr Essien, do you have anything to add on the questions I have just asked?

Mr Essien: I think there is no question that the issues John has raised have added to cost. A primary issue that is constantly raised in leasehold valuation tribunals is neglect. The lack of investment over a lengthy period of time—there is a particular case that went to the Lands Tribunal where this lack of neglect gave the lessees an opportunity to argue to set off charges. That was a private sector property, but it certainly has consequences for the public sector. This neglect argument, the lack of investment historically, is going to be used to challenge what are essentially very large bills directly related, it is fair to say in the light of the Tribunal's decision, to the Decent Homes initiative.

Q39 Chair: Can I press you on that, Mr Essien? I think we would all accept that there has been a huge under investment in central rental housing, which is the point of the Decent Homes programme of

course; but presumably the value of the properties that were bought reflected their dilapidation, if I can put it that way?

Mr Essien: They may have done to an extent, but the difficulty is of course the cost of the works now in some cases will far exceed the value of what they are getting back perhaps, and the value of that property itself is subject to the ravages of the property market; so irrespective of the investment that is put in there and the money they have spent on it, if for wider issues the value of the property declines, they are still left in a difficult position.

Q40 Chair: Which properties have declined in value?

Mr Essien: We do not know yet—that is the point. Of course, none of us can look into the future, but you get the impression that sooner or later we are due, for want of a better expression, a correction perhaps in the property market such that the value of property will decline. Plus, if you are a lessee of a public sector property and you have historically paid bills of five, six, seven, eight or 10 thousand pounds, the likelihood is that that local property market is going to see your building as a problem; and it does not matter what is happening across the street with the private sector landlord who may have much the same address as yours, but you are going to have problems perhaps in selling your property.

Q41 Anne Main: You have actually said the amount of money invested. Do you have any examples you could give us where there has almost become a negative value in the property and more needs to be spent than the value of the property?

Mr Essien: Off the top of my head it is difficult for me to think of a particular example. I can point to examples where tribunals perhaps have penalised local authorities in the way in which they have gone about determining works to be done. I can think of one particular case where windows had been done three years previously. The Decent Homes initiative came around and they were going to do it again and charge lessees once again for it, and that was not backed by the leasehold valuation tribunal.

Q42 Emily Thornberry: Your role in LEASE is to give information and advice to leaseholders facing these very large bills, and the major way in which leaseholders can challenge these very large bills is by going to land valuation tribunals.

Mr Essien: It is and that is the theory. The practical reality—

Q43 Emily Thornberry: That brings me to the next question. Can you explain to the Committee about the enormous difficulty that leaseholders face when trying to go to LVTs and how complex and difficult it is for them to work as groups in class actions in the way they have to?

Mr Essien: Absolutely. Fundamentally, the first point to start off with is that nothing has changed in terms of the law that would have been applied in the county court that is now being applied in the leasehold valuation tribunal. It is the same law. The only thing that has changed is the venue. It is a more

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straightforward and openly friendly venue for lessee participants; but the problem is they are trying to apply principles about the Landlord and Tenant Act 1985, and the sheer scale of works—how works are procured, and this vague concept of “reasonableness”. They struggle with that, because for many people the idea of reasonableness is not about the necessity of the works, it is about how the pound in their pocket and what they can afford to pay in the grand scheme of things. Many of these works, especially coming up in 2010, are huge. They are difficult, and certainly for those procuring them are difficult, let alone for members of the public trying to put together arguments to challenge them. It is simply, for practical purposes, a very difficult thing to do. I can think of one example where the lessees in Southwark paid £20,000 in professional fees to take it to the tribunal, and they lost one issue, which was their prime concern. Having said that, they won in most areas, but the one issue, which was the neglect argument, I am afraid they did not succeed in. It is that kind of scale of expenditure we are talking about to have a case that is a runner. If you are an elderly couple that does not have a great deal of information about the works and their scale and how to organise the case for the tribunal, the fact is that even with the best case in the world you are going to struggle.

Q44 Emily Thornberry: Once the councillors have essentially given you the bill, the only way in which you can challenge it is if you are able to understand the complex law of landlord and tenant, the understanding of bills that have been given to the local authority, and working in conjunction presumably with other leaseholders from your estate and all keeping going in the same direction and deploying the same tactics legally.

Mr Essien: Absolutely right. It is only because I think this group of lessees were able to bring their finances together to raise the funds for this action that they got the successes that they did.

Q45 Emily Thornberry: If a group of lessees is not able to get together and raise a large amount of, say, £20,000, the amount you suggested as the amount you might need in order to be represented—if they cannot get that sum of money together to get represented are you able to represent them?

Mr Essien: No, we do not have that role. Our services stop at the point of explaining to them about the law and their rights, and being as practical as we can; but we are simply not resourced to be their advocate in the tribunal. What we have tried to do, as a sort of half-way house towards that, is look at tribunals as a last resort. Many of these issues, I like to think, boil down to matters that can be mediated, rather than the “winner take all” aspects of litigation and tribunals. We have a mediation scheme that was intended to get to the parties resolving these disputes for themselves, because a lot of these matters turn on matters of explanation, communication. Many local authorities—there is no real problem per se with the necessity of the work, but scale is a different thing. The necessity—a lot of the problem, in our

experience anecdotally, is that the message does not get across as to why it is necessary, or it does not get across quickly enough. That is when there is delay and suspicion and the feeling that there is a bigger issue for many leaseholders.

Q46 Emily Thornberry: The land valuation tribunal can look, can it not, at whether or not the council are getting value for money; whether or not the builders themselves have been ripping the council off; and that is something that presumably you are not in a position to be able to—

Mr Essien: Indeed, but the problem about the tribunal is that it can only deal with the case that is put to it. A lot of the time the evidence put to it from the lessee side is not terribly deep in terms of its investigation. The case is only as good as what is in front of the tribunal. They do have their expert panel of course, and they can examine wider than most courts can in most cases, I think; but I think they are going to struggle nine times out of 10 unless the case put to them is really quite specific.

Q47 Emily Thornberry: Mr Bryant, would you like to comment on the same issues from the point of view of the landlord?

Mr Bryant: Thank you. It was an absolutely key point that there is an issue about reasonability because people tend to interpret reasonability in terms of the ability of leaseholders to pay what they are reasonably able to pay. Of course, the law interprets it in terms of whether the costs are reasonably incurred, and there can be a great gulf between these figures. From the landlord point of view, the key issue has to be that given that landlords are obliged to carry out works, and would quite rightly be subject to criticism if those works were not carried out and the buildings were allowed to deteriorate—if those works are unavoidably expensive and if the costs are not going to be met by leaseholders, by whom are they going to be met? This is the absolutely fundamental issue, because with the housing revenue accounts ring-fenced in local authorities, and with housing associations obviously drawing their income substantially from periodic tenants, effectively if leaseholders do not pay their due share of the costs, it will be borne by periodic tenants. I appreciate that many leaseholders are not well off, but statistically periodic tenants are on the average far less well off than leaseholders. So it would be a kind of Robin Hood in reverse to have periodic tenants picking up the bill.

Q48 Emily Thornberry: If you, as a landlord, or a local authority as a landlord, were not getting value for money, and therefore too much public money was being spent and too much leaseholders’ money being spent on major works, how can that be challenged effectively?

Mr Bryant: In the first place, it ought to be challenged before it happens because the section 20 regime—which from a landlord perspective is a fairly demanding regime in terms of what you have to do, the processes you have to go through—except

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in an emergency situation you have to talk to your leaseholders about the kind of works that are contemplated. Assuming that the cost is likely to be above a certain threshold, you have to go through a tendering process.

Q49 Emily Thornberry: Not always. For example, in Islington there is not a tendering process, as one would classically think of it. They had preferred builders, and preferred companies that were gone to and offered the contracts.

Mr Bryant: This is only by the agreement of the leasehold valuation tribunal. We are talking here about a situation where there has been dispensation from the section 20—

Q50 Emily Thornberry: Yes, dispensation from the Department.

Mr Bryant: Yes, which is because section 20 is based on the procurement methods of twenty years ago, and the art of procurement has moved on since that date. It is now recognised that long-term partnering relationships are more efficient and cheaper from the point of view of the leaseholder who eventually has to pick up the bill than procuring works on a whole series of—

Emily Thornberry: Do you appreciate that the leaseholder does not feel they are getting value for money because there is no option? If they are told, “this is the cheapest”—“we are consulting you, but this is going to be the organisation that is going to put in your new windows” . . .

Chair: Can I just add to that? Is the procurement process exactly the same as when you are doing repairs to your other properties where leaseholders have nothing to do with it, and where a council is repairing its own properties?

Emily Thornberry: Yes.

Q51 Chair: So this is an issue about value for money.

Mr Bryant: Yes.

Chair: Which would be across the piece.

Q52 Emily Thornberry: Yes, absolutely.

Mr Bryant: Certainly in tenanted stock, where there are no leaseholders, and the section 20 procedures—and I should say where there are no variable service charges and the section 20 procedures would not be relevant, for large long-term works, people will get into this kind of long-term partnering arrangement whenever they can, because it is cheaper. It would be a perverse outcome, I suggest, if with leaseholders we got into a situation where we had to go down a more expensive procurement route simply in order to be able to consult on the individual steps of each part of the process.

Q53 Emily Thornberry: But you appreciate the leaseholder then does not feel consulted and this classic idea of a section 20 consultation—you would think you were being given some options, but if your consultation is “this is what you are getting” it does not seem like a consultation.

Mr Bryant: I think you should still be consulted about the nature of the partnering arrangements and who the partners are going to be, but you are quite right that once those arrangements have been entered into—and they are going to run for a number of years—then you are not going to be able to consult in the same way. However, because it is recognised that that is a better way of doing it in many cases, I presume that this is why dispensations have been so routinely given.

Q54 Mr Betts: Have you got examples? You might have tenants in a particular block arguing very strongly that works are carried out, feeling that they have been denied these works for years and years, and the leaseholders say they do not want them because they are going to be excessively expensive.

Mr Bryant: If you want me to point at a specific block, I will have to come back and do that, but anecdotally that is the standard, very common situation.

Q55 Mr Betts: Just looking at what we might be able to do to help to get round this. Presumably there is an obligation on the buyer to seek advice about the property they are buying and its state of repair, although very often buyers do not and rely on the valuation from the mortgage lender, but is there an obligation on landlords to volunteer as much information as they have, and do they routinely do that before someone purchases?

Mr Bryant: I think there is at the very least a moral obligation on landlords to disclose information of which they are aware, or even information about which they have a reasonable suspicion. It is possible to imagine situations where a landlord may be genuinely unaware at the time that the transaction goes through that very expensive works might be needed. When the landlord has the information, I believe they should share it.

Mr Betts: I would just have to say whether there the sort of mandatory home condition reports that have now been dropped from HIPS might have been a way forward!

Q56 Mr Oler: Is this particularly a London problem or a city problem? I represent an urban type area and a lot of my people do not suffer what we have been hearing from you. The local authority by and large tells them what is going on. The local authority member looks to see if value for money is being obtained, and then a payment plan is drawn up to ensure that the money is paid. Everyone gains: the tenant that is still in there and the person who has exercised his right to buy. I cannot for the life of me see why it is not happening in London.

Mr Essien: Mr Oler, are you saying there are payment schemes that assist people in your constituency?

Q57 Mr Oler: Yes.

Mr Essien: It is the same thing here, but they are not necessarily that helpful to many people in terms of their resources to pay things back. Secondly, if we

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talk about equity release, that Mr Betts mentioned earlier, the age of some of the people looking to use these schemes—it may not be practical for them.

Q58 Mr Oler: So the local authority then has first call on the value of that property when it is disposed of.

Mr Essien: Ultimately that would be the result, but a lot of lessees—and it is the perception that comes from us—and it is not just London. In your constituency it is a different kettle of fish, I would guess, but certainly we have issues from people in Manchester and in Norwich, as Pauline has seen, and in other areas. It is fair to say that the issues seem to revolve around the fact that their view is that these costs come from the Decent Homes scheme. Historically the complaints we used to get were really about communication and the standard of work. Now they are just about the sheer cost of these things, and that is not a coincidence. It cannot really be argued in our view at least that the two things are closely related; and therefore their view is that it is government policy that has put them in this position, and therefore government policy should assist them out of it in some way.

Q59 Mr Oler: Government policy is for homes that are let, not for properties that have been bought and are on lease.

Mr Essien: A lease is a letting; it is a tenancy.

Anne Main: Can I take you back to something Mr Paterson said earlier, about not being sure whether or not a landlord could let a tenant know what they might be in for. Earlier than that he said about windows that were fine and only been installed three years ago, but for some reason were being installed again. Would you ever be able to get clarity on what to expect if someone is going to come along and rip out perfectly good windows? Is the poor old leaseholder ever going to know what they might be letting themselves in for?

Chair: They do not have to do all the windows. Why do they not leave the leaseholders who have got—

Q60 Anne Main: I do not know. I was just hoping Mr Bryant could tell me why we are getting windows taken in and out.

Mr Bryant: I am not sure where the windows example came from. I do not know where that . . .

Q61 Anne Main: I am not talking about windows specifically. Then there may be other projects doing the same thing—re-doing something that does not need doing. Is that happening?

Mr Bryant: A landlord cannot always predict with certainty what the future costs of maintenance are going to be. Hopefully, if landlords are forthcoming about issues and if properties are competently surveyed before purchase, most substantial costs will be brought to light. It is perfectly possible to imagine circumstances in which, with the best will in the world by the land, and with a duly diligent survey, you could still have a major problem that does not come to light. For example, there might be asbestos in a property of which nobody is aware

because proper records were not kept, and you start to do some relatively minor piece of work and you discover the asbestos and realise you are going to have to do very major works to the property. It is quite possible that that could have arisen without anybody knowing about it. But there is an element of risk in property purchase. This could equally well happen if somebody bought a freehold property and the foundations shift. There are unavoidable risks in any property purchase, and leaseholders are potentially as subject to that as any other property owner.

Q62 Chair: Mr Essien, do you think that the risks are greater for a leaseholder than a normal—

Mr Essien: They are because most freeholders are only concerned with their particular property. John mentioned about people having surveys. The reality is that a survey is of the flat concerned for which the mortgage is payable, but the liability extends beyond that flat; it extends to the building at the far end of the estate perhaps; it may extend round the corner to the play areas or the tarmac, et cetera. I have never heard of a lessee going through the right-to-buy or who has already acquired a right-to-buy doing a survey of those areas—the boiler rooms and that sort of thing. It just does not happen, but your liability extends to it.

Q63 Chair: Can I ask you a separate issue because you also seem to indicate that there was a greater problem for leaseholders whose landlord was a social landlord than a private landlord. I accept that Decent Homes does not apply to private landlords, but there are multiple examples of private landlords who have suddenly discovered that they need to completely re-do the roof or something and charge all their private leaseholders enormous sums.

Mr Essien: But lessees have remedies to deal with that, such as the right to manage, applying to a tribunal for the appointment of a manager where they would effectively take management control away from their freeholders and penalise them in effect for that behaviour; whereas in the public sector that does not exist.

Q64 Mr Betts: On the issue of sinking funds, which was raised before, they are quite common in the private sector but probably less common in the social sector. I just wonder if they are a way of at least flagging up to someone buying a property that this is an ongoing cost that will be in there in the future, but a way of spreading that cost so that it does not come as a bolt out of the blue in five or 10 years' time after purchase. Is there more that could be done to look at that situation?

Mr Bryant: Obviously, we cannot recover contributions to a sinking fund as the law currently stands, unless the lease specifically authorises it. We have said in our submission that there might be a proposal in legislation to allow landlords to establish such a sinking fund after a proper consultation exercise, even if the lease does not specifically authorise it. We think that is well worth exploring.

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Q65 Emily Thornberry: Can I ask about alleviating leaseholders' problems now, because those are really what one might be able to do in the future. I know that the Social Sector Working Party seems to be recommending capping. I would like to know your thoughts on that; or is there anything else that can or perhaps ought to be done now, that the Government ought to be looking at now to alleviate the problems that are arising at this moment because of major works largely on the back of the Decent Homes Programme?

Mr Essien: I think the standout answer, if Decent Homes are at fault, as policy for these large bills, is capping. As far as other remedies are concerned, they are the sort of things that are necessary, but they are perhaps alternatives to soften the blow—not necessarily to remedy the problem from the lessee's point of view. Capping in the mind of many lessees will remedy the problem of this policy, imposing extra costs on them. If we are talking about easing the burden of payment, then we discussed very briefly this afternoon a number of ways in which that can be done. Sinking funds will not address the shorter term worth between now and 2010 because there is just not enough time to accrue the funds in the pot; but in the longer term any lessee with any degree of financial knowledge will understand rainy-day money. That is what it is; you put money to one side over a number of years, so that when it comes time for the roof, the cyclical redecoration, it is there to be used. I do not think it will be the panacea between now and 2010.

Mr Bryant: We must come back to the same issue that if the amount of money you need to recover from the leaseholders exceeds the cap, who is going to meet that difference? As we said in our submission, it is not an issue of how you reduce the burden for leaseholders, it is about how you make it more bearable. It is about softening the blow and spreading the cost; but in the end our view would be that it is the most equitable place for that burden to fall. Leaseholders benefit from improvements to their property.

Q66 Dr Pugh: I was struck, Mr Bryant, by what you said about reasonableness of costs of repair and things like that, and the difference in understanding between what the landlord thinks reasonableness means, and what the tenant means. The tenant defines it in terms of affordability; the landlord will define it in terms of whether it is a reasonable thing to do on that particular piece of property. I wonder where either of you felt the fault lay; does it lay with those people who are sitting on the Standing Committee on the Commonhold Leasehold Act who did not track carefully enough; or does the fault lie in the incorrigible behaviour of landlords who will seek to exploit any loophole in any piece of

legislation that they find? If I can give a parallel example, one other thing the Commonhold Leasehold Act did was, for very long leases, stop freeholders from insisting people change their insurance companies and so gain a significant premium for themselves. They did this quite commonly and quite exploitatively and purely to make money, not to insure the property any better. You would have thought that the Commonholder Leasehold Act would have put that one quietly to bed; but it left in there a clause that they must write to the person, and the person must reply in time. When a person does not, they are at it again, exploiting a loophole in the law. I am simply asking both of you: is the fault with the drafting of the law, or are we up against an eternal quality of landlords to get as much out of a situation as they possibly can?

Mr Essien: A very difficult question. In the circumstances, I would go back even further. To an extent the legal profession, although I hate to say it, has to bear some responsibility for not getting across to buyers when they first purchase the nature of the lease.

Q67 Dr Pugh: You have exonerated parliamentarians here.

Mr Essien: Well, that is not my position—The law is there and is there to protect people. It can be used; there is a venue for it to be applied in a leasehold valuation tribunal and elsewhere. However, if practitioners do not explain to people from the outset the nature of a lease and the obligations that relate to it—and potentially the extent of those obligations—they have to bear some responsibility.

Q68 Mr Olnier: I cannot, for the life of me, believe that somebody who is acquiring a property does not know what their obligations are when you are talking about a mixed—

Mr Essien: They do not. My experience is—

Chair: We cannot go round that one. It is not based on evidence and is based on opinions all round, and has to be.

Q69 Dr Pugh: Mr Bryant perhaps you can comment from the other side, specifically on the reasonableness. If it is not clear and it means different things to the landlord than it does to the tenant, who is to blame?

Mr Bryant: I would have to comment from the social landlord side and say that I do not think local authorities and housing associations would adopt that kind of exploitative attitude. Private landlords might, but I think most of the outstanding abuses have been rectified by legislation.

Chair: Thank you very much indeed. In fact I ought to declare an interest: I am one of three in a rights-to-manage company, so it can be done.

Witnesses: **Ms Anne Kirkham**, Deputy Director, Decent Homes, Housing Finance and Mixed Communities, and **Mr Simon Llewellyn**, Deputy Director Private Renting and Leasehold, Department for Communities and Local Government, gave evidence.

Q70 Chair: It has been alleged by various organisations and indeed councils that leaseholder bills are going to rise above 10,000 as a result of the Decent Homes Programme, and the Department's own research suggests that average bills will be well below that, but the quality of the information on both sides seems to be somewhat lacking.

Ms Kirkham: I think that is a fair conclusion, that there is relatively little high-quality information about leaseholders and their bills, which is one of the reasons why we did the piece of research that we did when it emerged that there were some issues around the size of leaseholder bills from people renting from local authorities. The evidence that we have managed to pull together since we did that research has been with the help of local authorities themselves. We do not have any regular statistical returns specifically around leaseholders and the nature of their bills, largely because we are reasonably selective about what information we do ask local authorities to provide, and there is a limit to what we can ask them to provide us with.

Q71 David Wright: It is quite astonishing. If you look at the scale of the housing investment programme submission forms over the last twenty to thirty years—and I know, because I used to fill them in—I would have thought there was some capacity within that structure to put some questions in about leasehold costs. I am absolutely stunned by that as an answer.

Ms Kirkham: We have been going through a programme of reducing the information that we have been collecting from local authorities, so a number of areas have been—

Q72 David Wright: Right, well clearly that was a bad idea, even in this context, was it not?

Ms Kirkham: If indeed we collected in the past a lot of information about leaseholders, we have had to make choices about reducing burdens on local authorities.

Q73 Chair: It is extremely difficult to discuss whether changes are required to reduce the burden on leaseholders if nobody seems to have comprehensive information on what the burden on leaseholders is, neither the organisations apparently trying to represent leaseholders nor the DCLG in the opposite direction. We do not know the scale of the problem. We do not know if it is a small number of people, in which case it might be relatively cheap to devise a solution; or whether it is very widespread.

Ms Kirkham: We have information on the total number of leaseholders. We have obtained information from London boroughs on the number of leaseholder bills over 10,000, so we do have that information. We do not have systematically collected information across the country but we have that specific information on the position in London.

Q74 Emily Thornberry: How many is it? From what date?

Ms Kirkham: The information provided to us was from May last year and we are currently looking at trying to update—

Q75 Emily Thornberry: Are those section 20s as well, or is that just the final bills?

Ms Kirkham: That, I am afraid, I do not know the specific . . .

Q76 Chair: Can we make sure we get that information afterwards. The issue we want to know is how many properties from the May 2006 data were over 10,000 and was that perception of the section 20s—was that an estimate or the actual costs?

Ms Kirkham: We do know that it was around 5,000 were over 10,000 out of the total number of leaseholders in London.

Q77 Chair: How many leaseholders are there roughly?

Ms Kirkham: About 108,000, I believe.

Q78 Chair: But you do not know whether those are estimates or the actual costs?

Ms Kirkham: I do not have that information with me, specifically whether they are section 20 or not.

Anne Main: Those figures surely could be extrapolated by somebody into a projection?

Emily Thornberry: Not outside London, I do not think. If it was linked in with the Decent Homes Programme, if we were at an early stage in the Decent Homes Programme, then getting figures from May last year is not necessarily—

Chair: I understand that, but the difficulty is that if you are dealing with people's fears of future costs we are into supposition and not actuality. That is the problem.

Q79 Anne Main: Definition of essential works: a Social Sector Working Party recommended extending the definition of essential works to cover works carried out under the Decent Homes Programme. Have you discussed this with the Department of Works and Pensions?

Mr Llewellyn: We have not directly discussed this with the Department of Works and Pensions, no. They have particular allowances, and they are related to the housing health and safety rating measurement on households in Decent Homes.

Ms Kirkham: Simon is right; we have not had specific discussions. The essential work, as Simon says, covers what is one aspect of the Decent Homes target, which is that homes should meet the statutory mandatory standard, which is now Housing Health and Safety Rating. It does not cover the other three components of the Decent Homes standard. There is clearly an issue about what it is appropriate for those to cover, because these are essential works that would be eligible for any support to any homeowner who needed to take out a loan in order to

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carry out those particular works to their property. So in looking at this, it is not simply an issue for leaseholders; it would be an issue for any home owner who perhaps needed some support with mortgage or other loan in order to carry out those works; so it is quite a big issue here.

Q80 Chair: Can I clarify your title, Mr Llewellyn: are you responsible for renting and leasehold from private landlords?

Mr Llewellyn: Yes, that is right.

Chair: And Ms Kirkham from the social sector, just to be clear. So the Decent Homes initiative is nothing to do with your remit but with Ms Kirkham's—

Anne Main: Nobody has had discussions.

Q81 Mr Betts: It is probably quite clear in the end that there is a responsibility on the leaseholder for matters to do with the property itself—the roof, the lifts and those sorts of issues. There is another problem area, which is probably more common, on right-to-buy issues outside London, and that is the open spaces, the playgrounds, sometimes an adopted road or footpaths; and there are arguments about whether these should be funded out of the council's general fund or out of the housing revenue account, and if it is funded out of the housing revenue account how do you get people who have bought their houses to pay a share towards it? It is something that the Department ought to help with by clarifying where it thinks these various amenities should be charged to in the council's finances.

Ms Kirkham: As the legislation currently stands under the Local Government 1989 Act, local authorities can already identify what amenities are shared by the whole community; and when they have done so they can make a contribution from other funds into the Housing Revenue Account to pay for those works. The provision is already in the legislation. The legislation also permits for government to make a direction as to what might be covered by that type of work, but to date we have chosen not to do that, feeling that it is more a subject for local decision-making as to what in a particular circumstance would be considered to be appropriately classified as public works as opposed to works that were appropriate to either the tenants or the leaseholders themselves to bear a share of the costs.

Q82 Mr Betts: Do you give any guidance on that?

Ms Kirkham: No, we have not currently given any guidance as to what those works are. That may be something that Ministers can look at in the review they are currently engaged in on leaseholders generally.

Q83 Mr Betts: If the houses are run by the council and the communal areas are probably inside the housing revenue account, what happens if you get stock transfer and you suddenly get a different arrangement of ownership, whether it be stock transfer or even interim, where the ownership

remains with the council and there are management changes. Does not the whole issue of backwards and forwards seem a lot more complicated?

Mr Llewellyn: Quite often those common areas will transfer with the housing, and therefore the RSL then becomes responsible for those public areas, in the same way the local authority was as part of the housing revenue account.

Q84 Mr Betts: And they would then continue to try and collect from the leaseholder.

Mr Llewellyn: Yes.

Q85 David Wright: What would be the capacity then for a contribution from a general fund? Zero presumably!

Mr Llewellyn: That is right, because the land would no longer be in ownership of the local authority; it would be private land owned by the RSL. But in each transfer there will be clear negotiations and sometimes re-definitions between the local authority and the RSL as to what land does transfer across; and quite often transfer is an opportunity to re-visit what is held within the HRA on particular estates or whatever, because, as you say, roads or whatever may not always transfer.

Q86 David Wright: So theoretically you can have people in the same block who purchase at different times, who have a different contribution to make because there may have been a general fund contribution on their previous agreement or not. Am I right? We could have a variation, could we not, in the amount being paid?

Mr Llewellyn: I would doubt that the general fund was specific to an individual's contribution. I think it is more likely that the general fund will just be a general contribution into the costs of works at some particular time.

Q87 Mr Betts: You could get a situation then when there was a general fund contribution to the maintenance of open areas that remained in the housing revenue account; that land was then transferred to the housing association and you suddenly found that the leaseholders in that area had no obligation to pay for the maintenance of the open space—is that right?

Mr Llewellyn: No, I think it is more likely that if a general fund contribution had been made, and it was felt appropriate to be made, that might be a reason why the local authority would consider what land was transferring and may not transfer all of that land, because it might be more likely that it should come within the general fund.

Q88 Mr Betts: Is this an issue that you do give guidance on and look at in terms of stock transfers?

Mr Llewellyn: It is an issue that is flagged up. There is a detailed guidance on a point-by-point basis.

Q89 Mr Betts: So you could get that situation I have just described, and that is something the Department would be quite happy about, would it?

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Mr Llewellyn: It is possible. I would stop at saying the Department would be happy because we do not actually know whether that has happened. As I say, in each individual transfer the RSL will negotiate with the local authority what land is taken on, and the transfer price will be based on those obligations, that transfer across.

Q90 Mr Betts: It strikes me that the Department is writing off a substantial amount of the debt on those properties when it sanctions a transfer, so it is writing off that debt, as a government department, without scrutinising the terms under which transfer takes place.

Mr Llewellyn: They will scrutinise the terms of the transfer—and of course not all transfers have their debt written off; some are positive value transfer.

Anne Main: The scrutiny will be on a case-by-case basis, rather than making some general rule as to what should be in and what should be out of that particular transfer because circumstances will vary depending on the nature of the estate that had been transferred across.

Chair: I have been passed a note by our adviser which says that the lease would specify what a leaseholder's service charge would cover, and that would not change with the change of landlord. That is the advice I have been given.

Q91 Mr Betts: I am sorry, but the point I was trying to get at is that it might well be that the initial lease did not require a contribution from the leaseholder, and the general fund was effectively picking it up and saying "on behalf of everybody we are putting money into this communal area"; but if the land was still in the housing revenue account and then transferred to a housing association, there would be no ability for the general fund to put money in, and therefore the total burden on that particular open space area will fall back on the tenants, with no obligation on the leaseholder to pay. That would be the situation.

Mr Llewellyn: That might be reflected in the valuation at the time.

Q92 Emily Thornberry: You have told us about the estimate you have at the moment in relation to the number of bills over 10,000, but do you also have an account—because council's have some discretion to help ameliorate difficulties that leaseholders have, and I wondered whether you monitored the exercise about discretion in any way. Which councils are helping out their leaseholders, and which are not? If a council does not help out its leaseholder, what power, if any, do you have to make them help out leaseholders?

Mr Llewellyn: At the moment, the information we have on that is only based on surveys by London councils. We do not collect information from local authorities on the use of the discretionary provisions. As suggested, they are discretionary, and it is for the local authority to decide whether or not to make use of those. The Department has put in place, as part of the discretionary provisions, a set of criteria that a local authority can use in deciding

whether or not to give additional support or capping. It does not proscribe particular circumstances when they must or must not be used because they are ultimately discretionary, not mandatory.

Q93 Emily Thornberry: Obviously with the various reviews that have been going on, we have heard suggestions from witnesses today and all sorts of different bodies, not least the Social Sector Working Party, that there should be changes in the law. Are there planned changes to the law in the pipeline, and will you be looking at such things as how leaseholders can satisfactorily challenge whether or not we are all getting value for money when leaseholders' money is spent on doing up social housing? Will you be looking at the difficulties in relation to land valuation tribunals? Will you be looking at ensuring that councils exercise their discretion as opposed to simply giving them a power and then them not exercising it? Are these the sort of things that you will be looking at?

Mr Llewellyn: The report by the Social Sector Working Party was a report to government and was sent to Baroness Andrews. She acknowledged the report on 22 February and wrote to Peter, thanking him for it and saying that the recommendations within it would be considered. The report itself does not give a unanimous view; it recognises that there are a range of opinions, both from leaseholders and landlords, so in looking at the report ministers are considering, as part of the review, what actions they may wish to take. They have yet to come to that view. As you say, those things are set out in the Social Sector Working Party report, so they are things that ministers will reflect on.

Q94 Chair: Do you have any indication when they will come to a decision?

Mr Llewellyn: My understanding was that the Secretary of State said before Easter.

Q95 Martin Horwood: In terms of your different roles, one with the private sector and the other with the social housing sector, is there more or less pressure from one section of the civil service for legislative improvements, to put it like that, than from the other?

Mr Llewellyn: Our advice is to ministers. We like to think we work as a team and not particularly with conflicting objectives.

Q96 Martin Horwood: You want a level playing field though, do you not?

Mr Llewellyn: You want a level playing field. Certainly the intention behind the 2002 legislation was that there should be a level playing field for social sector and private sector leaseholders. The legislation does not as such differentiate between the type of leaseholder. What we have found subsequent to the 2002 Act is that applying the legislation requires different treatment because of the different nature of the landlords, and the regulations that govern local authorities as opposed to private sector.

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Q97 Anne Main: This obviously is relevant to both private and social landlords: I wondered what discussions you had had with the Treasury about reducing the tax rate on sinking funds, which some see as a strong disincentive to leaseholders and landlords.

Mr Llewellyn: The Finance Act 2006 did make changes to the rate of tax payable on interest earned on moneys held in social sector sinking funds, so that now these are taxed at basic rate.

Q98 Anne Main: I just wanted to know what discussions you had had with them about reducing the tax rate.

Mr Llewellyn: We did. That was the outcome of our discussion in terms of social sector.

Q99 Chair: The basic rate is 22, is it?

Mr Llewellyn: My understanding is that it is going to be set at basic rate.³

Ms Kirkham: It was the same discussion, so we wouldn't have had separate discussions; it would have covered both sectors.

Q100 Emily Thornberry: At the moment, if major works are done through a variety of different pots of money, including PFI, it is capped at 10,000. If major works are done through funding by an ALMO there is no cap. Will ministers be looking at

possibly putting "ALMO" into the bit of legislation that stops those leaseholders being charged more than £10,000?

Ms Kirkham: Ministers are looking at a wide range of things, but in terms of why PFI is seen as different currently to ALMOs is that the capping relates to specific programmes that are locally and estate specific, which by their nature have looked to be much broader regeneration initiatives rather than simply to getting improvements to property. Under PFI, although the capping is there, the provision for providing the resources is something that the local authorities themselves have to provide; it is not provided out of the costs of the PFI credit.

Q101 Chair: Has there been an analysis of what the costs would be to the Treasury were capping to be introduced across the board?

Ms Kirkham: We have done a range of estimates, but as we said at the very beginning, a lot of it will depend on the assumptions you make. The number of leaseholders who might be affected is from survey data is not from individual local authorities, but to do that calculation it depends on estimating what you think the cost of works is going to be across the country.

Q102 Chair: Have you done that?

Ms Kirkham: We have done some estimates of those, and we have come up, depending on the assumptions, with quite a range of numbers. I do not have those figures in my head at the moment.

Q103 Chair: Would you be able to give them to us?

Ms Kirkham: I see no reason why we could not provide those figures.

Chair: That would be very helpful, with the assumptions, obviously. Thank you very much indeed.

³ We could confirm that this was 22%. We could also inform the Committee that in the Budget of 21 March 2007 the Government announced that it will extend this relief to the income on service charges and sinking funds held by private sector landlords on trust.

Written evidence

Memorandum by LEASE

LEASE is involved in the issue of large service charge bills for social sector leaseholders in two areas, in our capacity as the Leasehold Advisory Service in provision of legal advice to clients and as Chairman and Secretariat to the Social Sector Working Party.

LEASE is an NDPB of DCLG, funded under S94, Housing Act 1996, to provide free legal advice on residential leasehold issues to all parties in the sector and to advise Ministers and Government on issues of leasehold reform. We presently respond to some 32,000 enquiries annually, around 80% of these being from leaseholders; a proportion of these will be leaseholders of social sector landlords although we do not record this specifically. Through enquiries we are directly aware of high charges being experienced in the social sector arising from major works, usually arising from or as part of the Decent Homes programme.

As an impartial body we were asked by DCLG to set up, chair and administer the Social Sector Working Party to examine problems and issues arising in the sector; the group includes both landlord and leaseholder representatives and therefore represents a full spectrum of view. Last year the SSWP was invited to examine specifically the issue of high service charges, in parallel with the study being carried out by Chris Meader's team in the DCLG's Home Ownership section. We reported to Baroness Andrews, Undersecretary of State on 25 January this year.

The report to the Minister sets out the SSWP's views on the cause and extent of the problems and provides a number of recommendations for action; this is considered an open report, it is available on the LEASE website, and I enclose it as our memorandum to the Committee.

The recommendations take no acknowledgement of Government policy or financial guidelines, they are simply proposals to deal with the identified problems should the Government be minded to do so. The SSWP is uniquely placed to discuss both the issue and potential solutions and is anxious to enter into dialogue with Government to carry some, or all, of them forward or to consider the issues further.

Peter Haler, Chief Executive

CHAIRMAN'S INTRODUCTION

The Social Sector Working Party is grateful for the opportunity to place its views and conclusions before the Minister.

There can be no question as to the seriousness of the substantial service-charges now being faced by a great many social-sector leaseholders and the potential hardship arising; this has been acknowledged both in Parliamentary debate and by recently-commissioned research. Nor is there a question that the root causes of much of the present distress must be laid at the Government's door, both present and previous administrations. The issue for the Minister is whether this should be remedied by direct, financial and legislative, intervention, or by other means, or at all.

The role of social housing has changed significantly. With the increased emphasis on home ownership now the social landlord is required to enable rather than provide, for housing to be a partner in delivering a Government programme far beyond the traditional landlord role. However, the social sector still retains a major, historic, role as landlord of rented social housing and there is a valid argument that the obligations arising from this landlord-tenant relationship should not be obscured by these wider Government policies.

In that the Government's housing policies are, most laudably, intended to benefit the wider community, doubts must be raised as to whether their effects should be borne by the social sector service-charge payer or by Government itself.

The Social Sector Working Party submits these proposals in the express intention of furthering dialogue on present problems and remains ready to discuss them with the Minister.

Peter Haler
Chairman Social Sector Working Party

SUMMARY OF RECOMMENDATIONS

It is for the Minister, to decide whether the circumstances around which large bills arise, and any hardship or other difficulties that may result, is an inevitable consequence of the responsibilities of home-ownership or if some intervention is justifiable and appropriate.

1. *Separate legislation for the social sector?*

The Minister, and Government, should give early consideration as to which of the two alternative positions are to apply and strengthen or amend the legislation accordingly:

- a level playing field with common legislation applicable to both private and social sector landlords and leaseholders; or
- separate legislation for the two sectors (2.8).

2. *Removal of “public works” costs from recharges*

The issue of directions by the Secretary of State (Part VI, Local Government and Housing Act 1989, as amended) on what items of account are to be regarded as properly within the HRA and “public works” properly to be recharged to the General Fund may assist in substantially reducing recharges to lessees in respect of general estate works and works required by other statutory obligations. (3.3)

3. *Statutory consultation*

It cannot be acceptable for Parliament to make requirements with which the landlord cannot comply other than to formally seek dispensation; there is a pressing need to review the S20 legislation and procedures to produce a workable solution in accordance with the wishes of Parliament. (3.4)

4. *To provide new legislation to enable leaseholders*

- to opt-out from the statutory consultation (S20) process.
- to join together as a recognised body to assume management responsibilities for spending decisions, on behalf of the landlord.

It is envisaged that this should apply subject to the leaseholders having a prescribed percentage in the block, say 15%–20% and their delegated control to exclude issues such as statutory disrepair and emergency works. (3.4)

5. *Capping of major works charges*

Capping of service charges may appear the only immediate solution to present problems. (4.1)

The landlord-side’s opposition to capping, on financial grounds, makes clear that they would not, was capping to be introduced, favour any discretion per authority but a mandatory scheme across the board. The following method is suggested: the council caps the leaseholder’s bill at the designated level, reports the consequences to Government which then allocates specific subsidy to cover the ensuing extra interest and capital repayment costs. (4.5)

6. *Exchange sale scheme*

There would be considerable merit in re-introduction of the Exchange Sale Scheme to allow social landlords to strategically direct problematic isolated leasehold units and concentrate them in blocks where leasehold tenure could form a majority. (5.2)

7. *Targeted buy-back*

The incentive to buy back already exists but the cash is not readily available for most local authorities— in these circumstances a solution would be to allow local authorities to offset 100% of their buy back costs against RTB receipts in respect of approved buy back schemes. (5.3)

8. *Reverse staircasing*

Reverse staircasing should be open to all social sector lessees, irrespective of whether they were original RTB or shared-ownership purchases but, as with proposals for capping, be restricted to resident-lessees. (5.4)

9. *Equity release*

To encourage local government in the sponsorship of a new national company to provide equity release monies from private finance. (5.5)

10. *Discretionary and mandatory loans*

Government to prescribe regulations to standardise schemes for discretionary and mandatory loans for service charges and to require compliance by social sector landlords. (5.6)

11. *Equity reversion loans*

To encourage local authorities to utilise existing powers in provision of equity reversion loans. (5.7)

12. *Redefine "essential works" to assist benefit payments*

The definition of "essential works" to be expanded to include works are part of Decent Homes programmes for the purpose of payments by the Benefits Agency toward interest on loans. (5.8)

13. *Sinking funds*

If sinking funds should be the norm for social sector service charge payers then legislation will be required to change Housing Revenue Account rules and to provide deemed inclusion of sinking fund contributions in all leases. (5.9)

An alternative approach would be the encouragement of individual savings schemes, administered by the landlord; the scheme would require ring-fencing rules that the saved sum would only be available for service charge costs and was assignable with the dwelling. This could be through a Government initiative and model scheme. (5.9)

14. *Code of management practice*

The mandatory application of a code of management practice, approved under 1993 Act powers, to social landlords; compliance to be through Audit Commission Housing Inspectorate. (6.1)

15. *Advice and support services*

That social sector landlords be required to fund local leaseholder advice and support services, ideally through a service charge levy from leaseholders. There is a precedent for this in the funding arrangements for the Housing Ombudsman whereby the service is funded by the end-user. (6.2)

16. *Leaseholder impact assessment*

That, every case relating to HRA expenditure arising from Government directives, initiatives or new legislation, to be accompanied by a formal leasehold impact assessment as an integral part of the process. (6.3)

1. INTRODUCTION AND BACKGROUND

The Social Sector Working Party

1.1 The Social Sector Working Party (SSWP) was established in January 2006 as an initiative by DCLG to provide a forum for discussion and to carry out a wide-ranging investigation of issues affecting leaseholders with a social-sector landlord, (a local authority, housing association or ALMO). The SSWP has the target of producing a full report containing findings and recommendations for action.

Terms of Reference and membership were agreed with the Department, the group is chaired by LEASE. Membership includes both leaseholder and landlord representatives. A list of members of the SSWP is attached at **Appendix 1**.

The SSWP, as a body formally constituted and recognised by DCLG, is best placed to continue investigation and to produce proposals required by the Minister presently and in future.

In advance of the full report the SSWP has been asked to provide recommendations for action on the issue of high service charge bills for social sector leaseholders.

Recognition of the issue of high bills for social sector leaseholders

1.2 The Government has already acknowledged the general issues of high service charges for social sector leaseholders in the Parliamentary Under-Secretary's statement to the Commons on 11 January 2006. The matter has been further raised in an adjournment debate on 1 November 2006 and the DCLG research report "Assessment of the impact of the cost of repairs for Right to Buy leaseholders"¹, published on the same day.

It is important to understand and to accept that the majority of the works presently planned and in progress, from which these charges arise, are necessary, and in many cases, urgent; buildings require maintenance and components deteriorate. In most cases they cannot be avoided, or delayed. These works must be carried out, within the near future, and must be paid for, by the leaseholders, by Government or through some other means.

1.3 The adjournment debate on 1 November 2006 has highlighted the Government's awareness and concerns that large bills can be the cause of hardship and potential homelessness. However both social sector leaseholders and their landlords require some firm assurance that remedial proposals will be seriously evaluated and considered for implementation by Government. In this context the Parliamentary Under-Secretary's assurance on 11 January 2006 that dealing with large bills (in the region of £40,000) was not a situation of potential hardship, but simply a need for "an adjustment of cashflow", may not have been helpful.

It is for the Minister to decide whether the circumstances around which large bills arise, and any hardship or other difficulties that may result, is an inevitable consequence of the responsibilities of home-ownership or if some intervention is justifiable and appropriate.

CONTEXT

2.1 The original sale of flats under the Right to Buy (RTB) and other arrangements on a leasehold basis placed social landlords, from the beginning, in a position of being unable to ensure full compliance with their obligations under the lease. The lease is in essence, a contract between two willing parties assuming an unfettered and full ability to observe and fulfil the covenants freely entered into; on the landlord's part this will include the repair, maintenance and improvement of the dwelling.

Councils, and to a major degree housing associations, are not free agents, being subject to Government controls on finance and numerous directions and regulations, including the rate-capping which contributed so heavily to the historic neglect now being remedied by the Decent Homes target for social housing. The Decent Homes target is, itself, an example of Government's overriding controls on the fulfilment of obligations under leases by social sector landlords.

The situation is further complicated by a local authority's general obligations that, to properly fulfil its functions it requires unfettered discretion in prioritising its use of a limited budget for the benefit of the whole community. To prioritise the demands of compliance with its covenants under leases would fetter that discretion.

2.2 Within this framework councils, and increasingly housing associations through large scale voluntary stock transfers, have to deal with a backlog of disrepair arising from poor-quality post-war housing developments and the residue of problems from the experimental and untested construction methods in the high-rise blocks of the 1960s and 1970s. Many of these buildings are, in reality, life-expired or subject to serious inherent defects requiring imaginative and hugely expensive solutions². The situation is further complicated by the widespread dispersal of leasehold flats where the majority of tenure in the building is social rented housing.

Although social landlords are legally obliged to provide information on the costs of home ownership including estimates of service charges, to purchasing tenants they could not have known, in advance, that the Decent Homes Standard (DHS) would be introduced. (other than for recent, post DHS, sales)

2.3 The social changes of recent years have provided greater pressure on social landlords in terms of increased security provision, such as door-entry systems and concierge schemes, and greater costs in works to deter or respond to vandalism. These issues relate directly to larger estates and high-rise buildings where the majority of lower-value flats, and thereby lower-income leaseholders are located.

¹ "Assessment of the impact of the cost of repairs for Right to Buy leaseholders", DCLG, November 2006, (Housing Research Summary 227).

² For example the external cladding of defective large-panel construction tower blocks and the difficulties with the "no-fines" construction identified in Manchester.

The Decent Homes target

2.4 The Decent Homes programme is a justifiable and laudable response to these issues but it is regrettable that no separate consideration was given at any stage in development of the scheme of the potential effect on leaseholders. Notwithstanding the social landlords' repairing liabilities for leasehold and shared-ownership units, these are not classified as social housing and are not, strictly, included within the target.

The scheme has provided the responsible social sector landlord with an opportunity to deal with many of the issues outlined above and it is inevitable, as long-term stewards of social-funded property, that they will wish to include all possible necessary works within any major scheme.

The recent DCLG research on the impact of repair costs on RTB leaseholders³ points out, rightly, that leaseholders expect properties to be properly managed and maintained, and suggests that the Decent Homes target in itself is not the key driver for improvements to flatted accommodation. Rather, it is increased financial capacity among local authorities and housing associations harnessed to the Decent Homes agenda, which is driving improvements.

What this means is that social landlords are understandably taking the opportunity of the Decent Homes target to undertake major works more widely, including costly items such as lift replacement, district heating schemes and estate works. In contract terms, not only is it cheaper than undertaking works separately but social sector landlords are encouraged to do this to meet Government efficiency targets for management and maintenance works. For the leaseholders, especially in high value areas, this can mean unmanageably high bills. Any increased value in the property may not be a comfort to the leaseholder, who cannot realise this increase in order to meet the bills.

2.5 There is considerable risk in delaying major works, to contain service charges in the short term. Landlords have a duty to carry out works in a timely fashion. To delay works will not make health and safety problems go away, or reduce costs in the long run. Well-meaning landlords who delay works in deference to resident pressure are as misguided as those who deliberately take no action, to save themselves trouble. Financial constraints can also be a factor in postponement of works, especially for local authorities. However, major works should not be postponed because landlords fear residents' reactions or do not wish to reveal the true costs of maintenance. Leasehold is often a tenure of unpopular decisions, and this is magnified in the social sector, where programmes, costs and disruption are inherently greater. The fact that changes to the law have not addressed this properly does not alter the case.

2.6 Most leaseholders expect that costs will be incurred in this sort of work, but had not understood the following:

- The scale and speed of the works are much higher than anyone expected (including the landlords, who were not expecting Government funding).
- The cost of works could reasonably have been expected to benefit from economies of scale. In fact works of the scale and type of work undertaken can be significantly more expensive than for freeholders as a result of the following:
 - Higher relative costs for refurbishment work over new-build, coupled with building cost inflation (presently running at three times normal inflation rate);
 - Contractors must conform to EC standards, and must be capable of implementing large-scale works. Realistically this precludes smaller, cheaper companies;
 - Technical solutions must have built-in longevity, arising from the landlord's long-term responsibilities and therefore the quality is likely to be higher than most freeholders would choose;
 - There is an inevitable conflict of priorities between the leaseholders who would wish to limit costs and the renting tenants who expect the highest standards;
 - High-rise blocks are particularly expensive to maintain;
 - Social-housing estates attract higher levels of maintenance due to regular vandalism and anti-social behaviour. Those costs not recoverable through insurance are chargeable to leaseholders;
 - Contracts will include added costs to ensure public purse accountability which should not be rechargeable to leaseholders.

2.7 Only around 40% of social sector leaseholders are the original RTB purchasers. Therefore the majority of leaseholders presently experiencing problems with large charges bought on the open market; they did not have the benefit of the original discount nor do they necessarily have a significant equity above mortgage commitments. This issue will be revisited later.

³ "Assessment of the impact of the cost of repairs for Right to Buy leaseholders" op. cit

2.8 It is the general view of the landlord side that the increasing complexities to social sector leasehold management occasioned by Government restrictions, policies and funding arrangements justify separation of leasehold legislation to provide a separate, discrete, legislative regime for the sector. This remained their position throughout discussion and debate of what became the Commonhold and Leasehold Reform Act 2002.

This view is strongly opposed by the tenant side, and by LEASE, and was the Government's position in the 2002 legislation, which set out to "*rationalise leaseholders' rights and the related rules and procedures to eliminate anomalies, unjustified inconsistencies and loopholes*".

The fact remains that substantial legislative differences remain, notwithstanding the new legislation and that itself has produced further stresses on the uneasy relationship between private owners of flats and the commitments and restrictions of their social landlords.

The Minister should give early consideration as to which of the two alternative positions are to apply and strengthen or amend the legislation accordingly:

- a level playing field with common legislation applicable to both private and social sector landlords and leaseholders (opposed by social landlords but supported by leaseholders and LEASE); or
- separate legislation for the two sectors (supported by social landlords but opposed by leaseholders and by LEASE).

In either case the Minister should be clear that the necessary legislative changes will not be limited to leasehold reform but must include revision of local government and financial legislation, regulations and guidelines.

ARE LEASEHOLDERS BEING ASKED TO PAY THE RIGHT AMOUNTS?

3.1 This section will not attempt to examine, or comment upon, individual landlords' costs, their costing procedures or whether the changes are reasonable. This is the remit of the Leasehold Valuation Tribunals to which all leaseholders, including the social sector, have access. There have been a substantial number of such applications challenging reasonableness of costs from social sector landlords, the great majority of which have been decided in the favour of the landlord. Service charge budgeting is not an exact science and the most able and responsive of landlords can get it wrong. The difficulty is that leaseholders will often have to pay for mistakes.

The diversity of leases may cause problems, with varying definitions of services and apportionments. Complexities arise on mixed tenure estates, especially where renters are also paying service charges. Any failure to collect the full costs recoverable from leaseholders could result in disproportionate costs to renters. That said, the factors outlined in the previous section should be acknowledged: that Decent Homes works are augmented with others, with the effect that costs can escalate.

However, there are three issues identified which contribute to costs and where possible solutions may be presented.

Improvements

3.2 The great majority of social sector leases include a leaseholder's liability for costs arising from works of improvement; this is very unusual in private sector leases. This creates recharge abilities for substantial works, such as external cladding, door-entry systems etc; any social sector recharge will be higher than an equivalent private sector recharge because the landlord is able to carry out and recover the cost of necessary improvements.

There is no solution presented, the inclusion of costs of works of improvement within the social sector leaseholders' liability does increase levels of recharges, compared to the private sector.

The Housing Revenue Account and the General Fund

3.3 Section 74 Local Government and Housing Act 1989 ring fenced the Housing Revenue Account—it is the landlord's account and thus any costs attributable to it are rechargeable to the leaseholder (subject, of course, to the terms of the lease, reasonableness, statutory consultation etc). However the 1989 Act (schedule 4 part III para 3) states that where benefits or amenities are shared by the community as a whole the authority "shall make such contributions to their Housing Revenue Account which will properly reflect the community's share of the benefits or amenities". The definition of benefits and amenities is open to debate but could include shops, community centres and other buildings; roads; open spaces (and by inference lighting and security to roads, open spaces etc).

A problem is identified in the separation of costs in mixed-tenure estates providing "public" facilities, e.g. footpaths, play areas etc generally used by the public. At present these costs are usually allocated to the HRA and recharged to lessees as housing estate works but might more properly be charged to the General Fund as

public works; practices differ between authorities. The judicial decision in *Gulliksen v Pembrokeshire County Council (2002)*, effectively opens the door to desegregation of such allocation in the specific light of “public” usage of the relevant facility.

The group identified others areas, eg potential Disability Discrimination Act works, energy efficient homes, general estate works under Decent Homes programmes, where Government guidance might provide a diversion of substantial recharges from lessees.

The Act allows for the Government to make directions as to sums to be debited and credited but no such directions have been issued.

The issue of directions by the Secretary of State (Part VI, Local Government and Housing Act 1989, as amended) on what items of account are to be regarded as properly within the HRA and “public works” properly to be recharged to the General Fund may assist in substantially reducing recharges to lessees in respect of general estate works and works required by other statutory obligations. This would give local authorities an imperative to examine their portfolios in detail to ascertain which estates are “private” housing land and which estate have areas/facilities shared by the community as a whole. Removal of the community’s share of the costs will have the effect, in many cases, of reducing Decent Homes programme recharges to leaseholders.

This may be accomplished without primary legislation and has no cost or budgetary implications to Government. There will be, as a consequence, additional costs to be borne by the General Fund but it is suggested that this would be unlikely to adversely affect Council Tax levels.

Leaseholder consultation

3.4 The Commonhold and Leasehold Reform Act 2002 substantially amended existing legislation to improve consultation for leaseholders and to provide a genuine opportunity to influence works, services and costs. However the procedures are complex and bureaucratic, are unpopular with managers and have increased costs for service charge payers.

Evidence demonstrates that the statutory consultation framework does not work well in the social sector. Estates are larger, works are more extensive and complex, and often tied in with other works being undertaken to a landlord’s stock. Leaseholders may be in a minority among renters, who are understandably keen for their homes to be renovated.

The statutory consultation procedures are essentially incompatible with social sector procurement of services, specifically in terms of PFI/partnering arrangements which Government is directing social landlords toward:

- in very long-term maintenance/repair contracts landlords are unable to provide the required cost information to leaseholders, in that this cannot be assessed in advance and applied to individual properties.
- the timescales are incompatible with the volatile market for bulk purchase of gas, electricity and other commodities.
- requirements imposed by EC requirements, reflected in the consultation procedures remove the opportunity for leaseholders to propose contractors.

In response to these problems, increasingly social landlords have little option than making application to Leasehold Valuation Tribunals for dispensation to consult; faced with the landlord’s inability to comply, LVTs normally grant such dispensations. The procedures consume excessive staff resources and add to management costs rechargeable to leaseholders.

It cannot be acceptable for Parliament to make requirements with which the landlord cannot comply other than to formally seek dispensation; there is a pressing need to review the S20 legislation and procedures to produce a workable solution in accordance with the wishes of Parliament.

In addition, a more radical solution is proposed. The new consultation requirements have not delivered what leaseholders want, to be in a position to make the spend decisions rather than simply being consulted on proposals by the landlord. This is especially relevant in the situation where the unsubsidised leaseholders are in the minority in a block and so neither collective enfranchisement or right to manage (for housing association lessees) is available as an option.

The proposal is for new legislation to enable leaseholders

- to opt-out from the statutory consultation (S20) process.
- to join together as a recognised body to assume management responsibilities for spending decisions, on behalf of the landlord.

It is envisaged that this should apply subject to the leaseholders having a prescribed percentage in the block, say 15%–20% and their delegated control to exclude issues such as statutory disrepair and emergency works.

The proposals would effectively enfranchise the leaseholders giving them decision making power in relation to major works including control over procurement, design and supervision. The landlord would retain general management control over the rented units.

This proposal is not supported by some of the leaseholder side of the SSWP.

4. SHOULD BILLS BE CAPPED FOR SOCIAL SECTOR LEASEHOLDERS?

4.1 Any move to restrict costs to leaseholders raises the question of who pays, and the options are limited. Where costs have been incurred, these need to be met by leaseholders, landlords, Government funding, or some combination of these.

There is a strong argument that home owners should bear the cost of works to their home, especially improvements that add value. The problem is leaseholders facing charges that may be disproportionate to their means and any benefit they receive.

The picture is complicated by the profile of these leaseholders. Many will have purchased ex-RTB flats on the open market, or as buy-to-let investments and, arguably, should meet costs as they would have to in any market transaction. Other leaseholders may be the original purchaser, whose home has increased in value but whose circumstances have not otherwise changed. In either case many will have bought at the margins of their financial capacity and on the strength of service charge estimates pre-dating changes in policy which led to the current refurbishment activity.

Capping of service charges may appear the only immediate solution to present problems.

This issue has divided the SSWP with some members, primarily from the landlord side, having serious concerns on the issues of capping.. Recommendations are therefore made from this position.

4.2 The Discretionary Reduction of Service Charge Directions 1997 allow social landlords to reduce service charges for repairs, maintenance or improvements where charges exceed £10,000 in any five-year period. The costs of reducing or waiving charges are borne by the landlord, no specific Government assistance is provided. The Directions provided for two applications:

- Where the charge was for works wholly or partially funded by some form of Government financial assistance.
- Where the charge exceeded £10,000.

The principle is clearly established that Government, and local authorities, may, and in some cases must, acknowledge difficulties arising from high service charges by way of reducing or waiving them. There is no question that the Decent Homes programme and Government directives relating to partnerships and other procurement strategies have substantially increased recoverable costs from leaseholders, initiating the present public concerns (see paragraphs 2.1 to 2.6 above)

4.3 Notwithstanding these provisions the landlord side suggests that capping of service charges is not a landlord function, based on the principle that the landlord procures or supplies the service and the tenant pays the resultant charge. If that charge is unaffordable for certain leaseholders then two options apply:

- the leaseholder seeks assistance from the benefits regime.
- or
- the landlord uses innovative solutions to secure or collect the debt.

In that housing benefit is not part of the Housing Revenue Account, it can be argued that it is not within the landlord's responsibility to reduce debt or facilitate means of funding shortfalls.

4.4 The leaseholder side simply recognises the reality of the "asset-rich but cash-poor" social sector leaseholder, on a low income but just above benefits level, unable to afford the charge. Whilst equity may exist, such a leaseholder would find major difficulty in funding a loan and a capping of the charge would seem to provide the only viable solution. They suggest the application of a capping regime, within the 1997 Regulations, based on:

- the dwelling to the leaseholder's only or principal home, to avoid any question of subsidising the buy-to-let leaseholder.
- no discrimination between original RTB and open-market leaseholders.
- no exceptional hardship requirement.

The imposition of a means-tested qualification based upon capital assets will place an expensive administrative burden upon social landlords and will fail to address the presenting problem. A simple cap across the board would avoid these issues and, if restricted to lessees living in their own properties would limit its application.

4.5 Any consideration of capping must address four issues:

- whether it could be considered discriminatory against private-sector lessees who have no possibility of such caps;

- whether social sector leaseholders who have purchased their homes on the open market should be entitled to public subsidy, while their counterparts who have purchased private sector leasehold properties are not;
- whether it could be retrospective; and
- who pays the surplus above the capped amount.

The substantive problem remains that of finance, where the excess monies are to be charged. It is not presently permitted to fund housing maintenance works from the General Fund and, if the excesses have to be found within the Housing Revenue Account it will simply result in costs being shifted from the leaseholders to the renting tenants.

It is clear that capping, could only work through new money, additional Government funding specific to this purpose, as a direct recognition of present problems for social sector leaseholders, arising directly or indirectly from Government policies.

The landlord-side's opposition to capping is on financial grounds and they would not, was capping to be introduced, favour any discretion per authority but a mandatory scheme across the board:

- the authority caps the leaseholder's service charge at the designated level and reports the shortfall to Government
- Government then allocates specific subsidy to cover the ensuing extra interest and capital repayment costs.

5. MEASURES TO ASSIST LEASEHOLDERS TO PAY HIGH BILLS

5.1 Means to assist leaseholders to pay can be divided into two groups, pro-active initiatives by landlords in terms of buy-backs, reverse staircasing etc and schemes directly simply toward financial provision through loans, mortgages, equity release and sinking funds.

5.2 *Exchange sale scheme*

This scheme was proposed by Government in 1995 as a measure to assist council leaseholders unable to sell their flats on the open market due to mortgageability problems⁴.

The scheme enabled councils to purchase the flat subject to the sale to the leaseholder of a more suitable flat, with preservation of discounts; this principle could be adapted for three purposes:

- to remove isolated leasehold units "peppercotted" in otherwise tenanted blocks;
- to divert leasehold units from Decent Homes projects;
- to assist leaseholders to move from high service charge units to other dwellings whilst preserving their equity and ownership status.

There would be considerable merit in a scheme allowing social landlords to strategically divert problematic isolated leasehold units and concentrate them in blocks where leasehold tenure could form a majority; this would substantially reduce mixed-tenure management problems and develop blocks where the freehold could be sold off to the lessees (by 1993 Act or by voluntary sale). Whilst the proposal is primarily strategic it would be of considerable benefit to lessees in allowing moves to more affordable properties. It is proposed that the scheme not be restricted to original RTB lessees only since that would defeat the purpose. It is considered that this proposal would be within the legislative powers and duties of the Housing Act 1985/Local Government and Housing Act 1989 in terms of consents.

5.3 *Targeted buy-back*

This is an obvious, although problematic, solution where the overall financial burdens of home-ownership are beyond the leaseholder's means and where loan assistance would be impractical. Although within social landlords' overall legislative powers it raises the issues of available finance. As such buy-backs are within landlords' present remit, should Government wish to encourage buy-backs as a policy initiative as a demonstration of a willingness to deal with present issues, proper provision must be made in terms of available finance, primarily through unrestricted use of capital receipts.

Under a buy back scheme the landlord buys back the property at sitting tenant value and out of their proceeds of sale the leaseholders are obliged to pay their debts. The erstwhile leaseholder remains as a tenant. Currently some London boroughs operate a buy back scheme (Camden, Southwark, Tower Hamlets and Croydon) but the inhibitor here is the availability of capital funding—capital that would otherwise be spent on decent homes programmes. It is true that Statutory Instrument 2006/521 has enabled councils to keep 100% of social homebuy sale receipts for "housing purposes" including buy backs but early indications are that social homebuy sales will be too low to fund buy backs at the required rate.

⁴ Letter from Housing Policy and Home Ownership Division, DoE, to all local housing authorities and the Housing Corporation dated 19th June 1995.

The incentive to buy back already exists but the cash is not readily available for most local authorities—in these circumstances a solution would be to allow local authorities to offset 100% of their buy back costs against RTB receipts in respect of approved buy back schemes.

5.4 Reverse staircasing

In an existing shared-ownership arrangement the staircase structure already exists and reverse staircasing is a present option, although subject to regulation. In cases where lessees have 100% equity, or who have never been shared-owners a new arrangement will need to be entered into, either based on existing schemes or on joint-ownership trust basis.

Reverse staircasing should be open to all social sector leaseholders, irrespective of whether they were original RTB or shared-ownership purchases but, as with proposals for capping, be restricted to residents.

5.5 Equity release

Equity release can provide a useful source of funding but it must be borne in mind that not all social sector leaseholders have substantial equity in the dwelling, available to be released to fund works. Whilst a substantial number may do it should not be assumed that equity release is a universal panacea.

The DCLG has discussed equity release for local authority leaseholders with organisations such as the Council for Mortgage Lenders, the Home Improvement Trust, the London Rebuilding Society, the Local Government Association and London Councils. The Joseph Rowntree Trust has also recently published a report looking at obstacles for equity release⁵.

Many local authorities promote the HouseProud scheme, however, despite Government marketing and the resources spent on publicity, take up of this scheme has been low amongst leaseholders because of serious problems with the product, ie

- there is only one small building society offering loans (Dudley);
- the scheme is geared towards private sector homeowners who want home improvements rather than money to pay for decent homes bills;
- the scheme is too complex and requires many forms to be completed;
- the scheme has high administration costs—approximately £1,200—but some LAs subsidise these costs to incentives leaseholders to use the scheme. Many households do not complete once the full costs are revealed;
- despite adverts to the contrary, all loans are now secured against the property and there is no blanket guarantee of non-repossession (such guarantees are only available for the 60 year old plus categories for loans up to 15% of the value of the property for 60 year olds rising to up to 30% for 75 year olds).

Many RSLs proactively use their financial muscle to forge partnerships/close links with building societies who recognise the potential business opportunities from the sector, eg insurance schemes. In a similar manner, boroughs could utilise their collective muscle to invest in a public scheme. This would provide a better return for public investment than individual councils using their small funding pots—mainly from private sector assistance resources. The scheme could entail collectively approaching a larger building society to establish a public sector scheme offering preferential rates for council leaseholders, a lower eligible age criteria for unsecured loans guaranteeing non-repossessions, and independent financial advice. However, any such proposals should be discussed by finance officers at an early stage to avoid legal and corporate pitfalls.

The role of other agencies could be expanded, because social sector landlords cannot and should not act as financial advisers and they are neither independent nor impartial. Therefore, it is essential that landlords are able to refer leaseholders considering equity release or loans to see an independent financial advisor. To achieve this, links could be forged with external partner organisations such as Age Concern, large building societies or to the Council of Mortgage Lenders who could promote a public sector council friendly equity release scheme. Alternatively, Government could fund an agency or an advisor to give independent impartial advice to public sector leaseholders in financial difficulty.

An additional proposal would be for local government to sponsor a new national company to provide equity release monies from private finance. This proposal is being actively worked on by London Councils and is based on the following:

- Finance would be raised privately—no costs to councils beyond any indemnity or set up costs in individual cases.
- The benefit of the company being a creature of local government would be that the LA would be responsible for admin and process.
- A national company could mix public and private finance to meet LAs' requirements.

⁵ "Obstacles to Equity Release" Rachel Terry and Richard Gibson, JRF, 2006.

- A national company avoids local authorities developing and administering their own schemes.
- If equity release is the main purpose of the company, equity release will be restricted to the over 65s.
- Existing commercial equity release providers would provide private finance to the company and mortgage lenders would be interested if the company also provided interest only loans.
- It is thought that if the business is there, it is would be possible to get a group of national firms together to negotiate fixed price arrangements for independent financial advice provided by specialist advisors trained specifically for the LA client group.
- The company would be fully regulated by the FSA.
- The purpose of the company would be to provide credibility in the market place for equity release loans, it could be a transitory company for eg 10 years while the mainstream market develops.

5.6 *Mandatory and discretionary service charge loans and other landlord assistance*

At present, mandatory service charge loans are only available in the social sector for leaseholders who bought under RTB (and not preserved right to buy or right to acquire), subject to timing and financial restrictions. The Regulations under which these loans are made date to the early 1990s, and are of their time.

At present local authorities/ALMOs act as lenders of last resort and the interest rate that must be charged reflects this.

However, the requirement to charge a high rate appears to be predicated on loan qualification criteria that may apply in the general community and not specifically to public sector leasehold units, for example some lenders may be cautious about lending in a high rise block, notwithstanding that the leaseholder can service a loan. Having to come to the local authority/ALMO and paying an interest rate higher than is on offer “in the high street” acts as a penalty for being a public sector leaseholder.

We prefer more flexible approaches, in keeping with the focus on effective delivery rather than prescriptive regulation. Social sector landlords should be active in promoting financial inclusion, including to low income home owners. To meet the needs of service charge payers, we would suggest greater use of low-interest loans, with flexible repayment periods (not the rigid two to five years reported from some local authorities).

Mechanisms are already in place for social landlords to provide discretionary loan assistance and many do so. (**Appendix 2** contains a summary of the various assistance offered by London boroughs to help leaseholders pay high service charges). Some councils and ALMOs offer very generous schemes, other local authorities may only offer mandatory service charge loans. One solution to ensure equity across the sector would be for Government to prescribe regulations to standardise schemes and to require compliance by social landlords; it is not equitable for the social sector leaseholder to be penalised by location, the same loan assistance should be available to all.

This proposal would not necessarily be supported by RSLs who, as independent businesses, expect to make their own business decisions.

5.7 *Equity reversion loans*

The legislation enabling local authorities and housing associations (via the Housing Corporation) to grant loans in respect of service charges, secured as mortgages on the property already exists⁶. Councils and housing associations can charge a “reasonable rate of interest” and can leave all or any of the debt outstanding (so, for elderly residents (who are often equity rich, cash poor) the debt can be secured as a mortgage charge on the property without monthly payments—capital plus interest payable on re-sale).

However this principle could be extended by the landlord accepting an equivalent “money’s worth” interest in the property. Similar to “equity release” the landlord would value the property and express the debt (plus costs) as a percentage of the property. On resale the relevant percentage of the value (not sale price) would be payable to the landlord. Councils would have the option in the deed of charge to protect their fiduciary interests by placing a caveat that the original charge sum would be the minimum sum repayable. The advantage of this option for leaseholders would be a lower rate of “interest” if values did not rise above or at the current interest rates. Such a scheme will increase choice for leaseholders.

5.8 *Commercial interest only loans*

For many social sector leaseholders, a commercial interest only loan will be the most viable form of assistance, as commercial lenders will offer the most competitive rates. Some lenders will not lend on particular properties and local authorities may be able to offer loans for these properties.

⁶ Section 450 Housing Act 1985 and SI 1992/1708.

With regard to all interest only loans, leaseholders entitled to benefits would be able to access these if the interest was paid by Government. Currently, the Government will pay the interest on loans taken out for “essential works” to the home, but the interpretation of “essential works” is a matter for the Benefits Agency. We propose that the definition of “essential works” is expanded to specifically cover all works carried out by social sector landlords as part of the Decent Homes programme for the purposes of pensions credit and other benefit entitlements, along with a protocol with the Department of work and Pensions. This will simplify the process for leaseholders in receipt of benefits to claim interest paid on loans to cover the works costs.

5.9 *Sinking Funds and tax-free savings plans*

The most effective way to ease the pain of major works bills is to make provision through time by the use of sinking funds. Many housing associations use sinking funds in all leasehold settings, and Government should enable local authorities to do so.

Local authorities are not normally able to run sinking funds because:

- there are no relevant clauses in existing leases.
- local authority finance rules restrict councils’ abilities to make contributions to funds in advance, in respect of the tenanted flats (councils borrow money for major refurbishment and pay the interest in subsidy).

If the Minister considers that sinking funds should be the norm for social sector service charge payers then legislation will be required to change Housing Revenue Account rules and to provide deemed inclusion of sinking fund contributions in all leases.

However, the success or otherwise of such schemes would be heavily dependent upon the taxation regime applying, at present interest on sinking funds is taxed at a punitive 34%. We believe that Government should ease the tax regime for sinking funds. It is plainly unfair that the prudence of landlords and leaseholders in making provision for future works is taxed as if they had established trusts for investment. Our preference would be for sinking funds to be tax-free, but, pragmatically, we could accept a level of taxation equivalent to other savings products.

An alternative approach would be the encouragement of individual savings schemes, administered by the landlord (viz present arrangements by Notting Hill Housing Trust); the scheme would require ring-fencing rules that the saved sum would only be available for service charge costs and was assignable with the dwelling. This could be through a Government initiative and model scheme.

6. OTHER INITIATIVES

6.1 Whilst high service charges is the presenting issue of this report there is little doubt that social leaseholders have issues with what they frequently perceive to be poor management, unsatisfactory communication and a lack of any say in what happens to their homes.

There is also a widespread feeling of impotence for leaseholders in challenging large institutional landlords arising from lack of necessary knowledge or availability of local assistance. These are issues that the SSWP will be considering in a wider context in a later report but a number of interim recommendations may be made for consideration in the specific context of assistance with high service charges.

6.2 *Codes of Practice*

S87 Leasehold Reform etc Act 1993 provides for the Minister to approve codes of management practice for leasehold property; there are only two codes presently approved under the legislation, those produced by the Association of Retirement Housing Managers and the Royal Institution of Chartered Surveyors. The RICS code specifically relates only to the private sector, the ARHM includes RSLs within its members who are bound by the code as a condition of membership.

Although the codes have Ministerial blessing they are not mandatory in use but departure from an approved code is a ground for the appointment of a manager under the Landlord and Tenant Act 1987. This legislation is not applicable to social sector landlords and, perhaps for this reason, no code relevant to the social sector has been submitted for Ministerial approval.

Both the Chartered Institute of Housing and London Councils have produced entirely satisfactory codes but compliance is entirely discretionary; there is little doubt that levels of management competence and procedures need to be improved across the sector and social sector lessees need to be aware that action is

being taken to achieve this. Some mandatory application of a code approved under 1993 Act powers could do much toward both objectives although this would be of little effect without means of enforcement or penalty in case of non-compliance.

Enforcement of legislative non-compliance is provided in the 2002 Act in rights for leaseholders to withhold service charges; this could easily be applied to non-compliance with statutory codes. It would provide leaseholders with a direct and effective means to maintain management standards through self-policing. Compliance should also be added to the Housing Inspectorate responsibilities under the Audit Commission Key Lines of Enquiry (KLOEs).

Standards of management vary widely in the social sector, with many staff entirely untrained for the complex roles they perform; some social landlords are too small to sustain expertise at the necessary level. It is proposed that any prescribed code should include minimal levels of training and, ideally, a requirement for minimal numbers of staff in possession of a recognised management qualification. Where organisations are unable to achieve these levels, compliance with the code could require out-sourcing of management to a competent supplier.

In the social sector, as in the private sector, there is a recognised and urgent need for some form of statutory regulation, or licensing of leasehold property managers. This has been raised previously by other agencies, without favourable acknowledgement by Government

6.3 *Information, advice and support*

Whilst social landlords are under a heavy burden in terms of provision of advice to putative purchasers under RTB/RTA and other schemes the purchasers have no single source of advice and support on the implications of taking on the long-term contract represented by the lease. Each purchaser is reliant upon his or her solicitor who may not be familiar with the implications of social sector leasehold; LEASE cannot assist at this stage since its remit is limited to existing leaseholders.

Social sector lessees frequently feel intimidated in pursuing complaints against their landlords and would benefit from a local source of advice and advocacy service. Some leaseholder associations are attempting to provide this kind of service, sometimes in conjunction with Citizens Advice Service, but it is impossible to provide an adequate level without funding.

It is recommended that consideration be given to means to require social sector landlords to fund local leaseholder advice and support services, ideally through a service charge levy from leaseholders. There is a precedent for this in the funding arrangements for the Housing Ombudsman whereby the service is funded by the end-user.

The SSWP will investigate the issue further.

6.4 *Leasehold impact assessments*

Many of the present problems of high service charges could have been foreseen had specific attention been given to the potential impact of the Decent Homes Target upon social sector leaseholders; similar concerns are likely to arise in the implementation of other Government directives involving estate expenditure, eg DDA, insulation standards etc.

It is recommended that, every case relating to HRA expenditure arising from Government directives, initiatives or new legislation, is accompanied by a formal leasehold impact assessment as an integral part of the process.

7. CONCLUSIONS

7.1 The above recommendations arise from 12 months intensive work by the SSWP, representative of all members of the leasehold sector, and with the additional benefit of work already done by London Councils. Some will require legislation and the SSWP is aware that no proposals presently exist for legislative change to leasehold legislation. However, the need is there for Government to acknowledge or not, as policy directs.

Some of the recommendations can be introduced by regulation at minimal cost or political fall-out and the Minister is urged to respond to these.

Appendix 1

SOCIAL SECTOR WORKING PARTY MEMBERSHIP

Leasehold Advisory Service (Chair and secretariat)
 London Leaseholder Network
 Manchester Leaseholders' Association
 Harlow Leaseholders' Sub-group
 Norwich Leaseholders' Association
 London Councils
 Local Government Association
 National Federation of ALMOs
 National Housing Federation
 The Housing Corporation
 Chartered Institute of Housing
 Department of Communities and Local Government

Appendix 2

MAJOR WORKS BILLS FOR LOCAL AUTHORITY LEASEHOLDERS

SUMMARY OF PAYMENT OPTIONS OFFERED BY LONDON BOROUGHS

INTEREST FREE PAYMENTS

Options offered by London boroughs are as follows:

- **12-month** interest-free payment option, which can be extended depending on the circumstances. eg if a leaseholder can pay a £24,000 bill with 24 instalments of £1000 the council would agree to that.
- **10 months** interest free instalments on actual bills. As the bills are not raised until the works are complete (or 18months after first payment to contractor) and in many cases not until the final account is agreed the interest free period in effect extends for as much as 2½ years from the initial notification of the works to the leaseholder. Where the leaseholder is able to make a substantial down payment and complete payments by instalments the council will extend the 10-month period.
- **10-month** interest-free instalments provided the first payment is received within 28 days. For bills in excess of £10,000, 24 interest-free monthly instalments are offered. Non- resident leaseholders are excluded from these options
- A **“deferred” repayment scheme**, which in effect allows lessees to repay the debt in instalments for any period up to 10 years. The first 3 years are interest free and then 2.5% over base rate for the remainder.
- Payment by instalments for estimated bills:
 - *£200–£2,000*
12-month interest free payment option (in equal monthly payments).
 - *Over £2,000*
24-month interest free payment option (in equal monthly payments).
- **36-month** interest free payment option provided that payments commence promptly upon receipt of the invoice.
- **Cyclical Decorations** repayable up to a max of 5 years, interest charged on years 4 & 5.
- Interest free repayment agreements:
 - *Bills up to £300*
6-month repayment agreement.
 - *Bills £301–£1,000*
12-month repayment agreement.

EXTENDED PAYMENTS WITH INTEREST

Options offered by London boroughs are as follows:

- *Two Year Repayment Agreement*
 - Leaseholders who are recharged £1,000 or more can make an arrangement to pay over a two year period. Such an agreement will be subject to interest.
 - Interest will be charged at the Local Authority lending, and will be fixed for the whole repayment period.
 - In the event of the invoice being paid within one year of the date of invoicing, no interest will be payable.
- Repayment plans up to 5 years but incurring interest.

STATUTORY SERVICE CHARGE LOANS

In some circumstances councils are required to offer a loan to leaseholders to cover the costs of service charges (see Housing Act 1985, Section 450a Housing (service charge loans) Regulations 1992).

- The landlord's right to be repaid is protected by a second mortgage on the property.
- Leaseholders have to fulfil a number of conditions to be eligible for loans, including:
 - The property must be a flat.
 - The property was acquired under the right to buy in the last 10 years (note: It does not matter who the leaseholder is now, only when the original right to buy sale was).
 - The total service charges for the year exceed £1,500 (fixed in January 1992 and subject to increases for inflation since then).
 - The loan is for the charge for repairs and/or improvements that is above the £1,500.
 - minimum, and that charge is itself at least £500 (again this figure is adjusted for inflation) of council leasehold management
- The repayment terms of the loan are:
 - The repayment period will be three years for loans of less than £1,500; five years for loans of £1,500–£5,000; 10 years for a loan of £5,000 or above.
 - The interest rate is at the statutory rate under schedule 16 of the Housing Act 1985 (currently 7.18%).
 - Councils can pass on administrative costs of up to £100 to the borrower.

DISCRETIONARY LOANS

London boroughs typically offer two types of discretionary loans—those repayable in monthly instalments and those repayable on the assignment of the property.

Loans repayable on a monthly basis

London boroughs offer the following discretionary loan schemes which are repayable in monthly instalments.

- If leaseholders do not have the right to a loan, or the right to a loan does not cover the full recharge, then they may have the option of applying to their council to be considered for a discretionary loan.
 - A council will typically take into account all adult members of the household when assessing whether leaseholders will be able to meet the repayments.
 - The loan will be secured by a mortgage on the property, and will be subject to interest at the Local Government lending rate (ie “the schedule 16 interest rate”).
 - Leaseholders are advised to compare the cost of a loan from a council to others available on the high street and to obtain independent financial advice before entering into any loan or mortgage that will be secured on their property.
 - Councils will typically adjust the term of the loan to meet the leaseholder's ability to pay; the interest implications of this are spelt out.
 - In order to be considered for a loan, leaseholders must be able to satisfy a number of criteria such as:
 - they are in employment;
 - the leaseholder or a member of their family are resident in the home;
 - they have applied to, and been refused by, at least two High Street lenders;
 - their property offers adequate security for the amount that they wish to borrow, taking into account any other mortgages secured against the property;
 - they can meet the repayments that will fall due under such a loan.

- A loan repayable by monthly instalments over a period of up to 25 years at an interest rate of 1.5% above the base rate of the Nat West Bank, provided there is sufficient equity in the property to cover the loan. An application fee £430 to cover the council's costs in securing the loan against the property can be added to the loan.

Loans repayable on assignment

London boroughs offer the following deferred loans which are repayable on assignment. Many boroughs will only consider placing the sum due as a charge on the property in cases of financial hardship as a last resort. Councils would strongly advise home owners to see independent advice before proceeding with such charges.

— *Over 60s maturity loan*

- Leaseholders who are aged 60 or over at the date of invoicing can apply to have the debt secured by way of a maturity loan (or charge) on their property.
- No repayment is due until the property is disposed/assigned or otherwise changes hands, or until the qualifying leaseholder and their named spouse (if any) dies.
- The loan will be secured by way of a mortgage on the property, and will be subject to interest at the Local Government Lending Rate.
- The Council recommends that leaseholders obtain independent financial advice before entering into any loan or mortgage that will be secured on their property.
- In order for the Council to consider granting a maturity loan, leaseholders must be able to prove that:
 - At least one leaseholder is aged over 60 at the date of invoicing;
 - That the lease was granted over 5 years ago;
 - That the property offers adequate security for the amount of the loan, taking into account any other mortgages secured on it.

— *A voluntary charge loan*

- The council can secure the major works invoice(s) as a charge over the property provided there is sufficient equity in the property to cover the debt and interest.
- Interest on the debt accrues at 2% above the base rate of the Nat West Bank.
- An application fee of £430, which covers the council's costs in setting up the charge and securing it against the property, can be added to the charge.
- The loan is repayable upon assignment of the property or can be repaid before assignment if the leaseholder chooses to do so.

— *Deferred Repayment Scheme*

- Interest will be charged at a variable rate.
- Leaseholders can choose the length of the loan which best suits their needs, provided that it is repaid well before the works are due to be renewed. eg a loan for window repairs and repainting could be for only four years, but for a new roof it could be twenty.
- The loan will involve a council mortgage on the home.
- No initial charge for the scheme except the Land Registry fee, which is currently £50.
- Available to owner/occupiers only.

— *The Deferred Payment Loan*

- Eligibility: Original RTB lessees who are either:
 - Over 55 years: or
 - In receipt of means-tested benefits/or low income.
- Leaseholders are not required to make payment of their Major Works bill for the term of the loan (up to 25 years) unless they either:
 - Sell their property; or
 - Transfer it into someone else's name.

- Additional Costs: £300 in legal costs + £52.50 for searches and Land Registry Fees. These costs can be added to the Deferred Payment Loan.
- Interest:
- Bills under £10,000—interest at the variable rate of 0.5% above the Bank of England Base Rate. Leaseholders can choose to pay interest on a monthly basis or add it to the loan and make payment when the loan is redeemed. Lessees receiving means-tested benefits may be eligible for assistance from DWP with interest on their Deferred Payment Loan.
- For Major Works bills over £10,000—may be eligible for an interest-free Deferred Payment Loan.

ADVICE

- Leasehold Welfare Advisor based within Newham Homes. This person assists leaseholders on marginal incomes, looking at income maximization, welfare benefit entitlement as well as offering a range of practical help and assistance.
- A number of boroughs either already work with independent advice agencies such as CHAS or the CAB or are considering doing so. The idea is that councils pay these agencies to offer independent specialist financial advice to leaseholders experiencing difficulties in sustaining home ownership.

OTHER

- **Advance payments.** Some councils will accept payments in advance for the cost of major works, so that when the bill finally arrives, much of it will have been paid already. If leaseholders pay in advance, the local authority will not be able to pay interest on any monies held.
- **Houseproud.** Some councils promote this equity release scheme, however, take up of this scheme has been low amongst leaseholders for a variety of reasons including the following:
 - there is only one small building society offering loans (Dudley);
 - the scheme is geared towards private sector homeowners who want home improvements rather than money to pay for decent homes bills;
 - the scheme is too complex and requires many forms to be completed;
 - the scheme has high administration costs—approximately £1,200—but some LAs subsidise -these costs to incentives leaseholders to use the scheme. Many households do not complete once the full costs are revealed;
 - despite adverts to the contrary, all loans are now secured against the property and there is no blanket guarantee of non-repossession (such guarantees are only available for the 60 year old plus categories for loans up to 15% of the value of the property for 60 year olds rising to up to 30% for 75 year olds).
- **Buybacks.** In some cases councils will consider buy backs if leaseholders are having difficulty paying their mortgage and service charges. The leaseholder would normally become a tenant of the same property after the buy back has been completed.
- **Discretionary capping of bills at £10,000.** If no other payment option is feasible, local authorities have the power to cap bills at £10,000. However, because this option represents a loss to the public purse, most boroughs use this extremely rarely.
- **5% discount on prompt payment** (ie within 6 weeks of receiving invoice).

Memorandum by the London Leaseholder Network

SUMMARY

We have been invited to submit evidence to the Communities and Local Government Committee on the impact of major works on the bills of leaseholders with a social landlord.

I would like to summarise our evidence as follows:

1. Leaseholders are in the main perplexed as well as alarmed to be receiving bills in associated by the Decent Homes Standard and other government programmes because the Governments own guidance on delivering the Decent Homes Standard states quite specifically that leaseholders are not part of the public sector housing portfolio, they are private tenants and not subject to the Decent Homes Targets.

We would submit that we should not be subjected to bills for delivery of government programmes and entitled to the help and assistance available to other private tenants and freeholders, from which we are currently excluded because of the status of our landlord.

2. Leaseholders understand that a lease is a contract for the proper management of a block of flats. We would submit that the role of local government and government as active third parties to the lease and controlling the spending of landlords and determining the level of costs to be carried by leaseholders is contrary to the spirit of the lease and unfair.

3. We would submit that the impact of bills for major works has been brought to the attention of parliament on many occasions since the 1990's. Government has responded by introducing a range of measures, which in our opinion had merit collectively. However, these measures have failed to be properly effective for several reasons, some of which are;

- (a) Government research underestimating the scale of the problems.
- (b) Insufficient resources as a result of this.
- (c) A lack of will from social landlords to action the proposals.

We would submit that appropriate solutions exist with measures already proposed by successive governments provided they are properly considered collectively, properly resourced and there is a will to implement them.

A capping regime remains as the cornerstone to our proposals and we do not believe that collectively our proposals will have an adverse effect on the public purse nor will they require disproportionate primary legislation.

INTRODUCTION

I am John Paterson. I have been involved in lobbying for leasehold reform since 1992.

Since 1998 I have represented social sector leaseholders on;

- The Lord Chancellors Working Group for Commonhold.
- The Commonhold and Leasehold Reform Working Party under the stewardship of LEASE.
- The ODPM Social Sector Leasehold Reform Working Party.
- The Social Sector Working Party currently chaired by LEASE and which has just submitted an interim report to the Minister regarding the impact of major works bills. I was elected to represent the London Leaseholder Network on the Working Party.

The LLN provides a monthly forum for leaseholder groups across London and is, therefore, well informed as to the impact of large bills.

INFORMATION

1. The present Government came to power in 1997. It came with a policy document entitled, "An End to Feudalism" and a manifesto commitment to reform leasehold law. In 1998 it published a consultation paper for a bill titled the Commonhold and Leasehold Reform Bill. The consultation document proclaimed that "The Government believes that the time has now come for a comprehensive review of leasehold law". This should;

Rationalise leaseholders rights and the related rules and procedures to eliminate anomalies, unjustified inconsistencies and loopholes."

This was welcomed by leaseholders.

2. Less than one year later Government Ministers were telling leaseholders that leasehold reform runs against the welfare of council tenants and the main reforms proposed in the legislation would not apply to the public sector. It remains the case that that government has continued to ignore this obvious anomaly and ensures lesser rights for those leaseholders with a social landlord.

3. Due to the difficulties government claims make it impracticable to make leasehold tenure a farer contract for those in the public sector, the question has to be asked whether in fact a leasehold contract is an appropriate means of transferring risk from the public purse to the private sector by means of individual sales.

4. There are a number of other reasons why a lease might be unsuitable in the public sector; such as the direct involvement of the government as an active third party both in controlling the spending of the landlord and in passing legislation that has the effect of over-riding terms in the lease, changing the nature of the contract that was freely entered into.

5. A lease is a contract designed to enable the proper management of a block of flats. It is not a tool for the proper implementation of local government and government programmes. These programmes have a much wider agenda and seek to deliver wider community benefits and value for money for the public purse. It is fair that leaseholders like other members of the community subscribe to the cost of such works through local and national taxes. The leases make no provision for funding local government and government programmes.

6. It is unfair that only those leaseholders with a social landlord should be required to pay additional costs for the delivery of government programmes. This ridiculous precedent would suggest that patients be charged for works to a government programme to improve hospitals and parents of pupils should be asked to pay for improvements to schools.

7. The DCLG has published a series of guidance for delivery of the Decent Homes Standard. Para 4.11 of the guidance published in 2004 states that social landlords may also retain some repairing responsibilities for leasehold stock and stock held under shared ownership. Such stock is not classified as social housing, therefore the target is not applicable. Para 6.5 of the same guidance states that delivery of decent homes should be seen as part of a wider goal to improve public service delivery and the standard of living for disadvantaged groups. It makes a major contribution to the wider objectives of tackling fuel poverty, reducing health inequalities, and addressing child poverty.

While these aims are laudible and leaseholders are happy to fund them through their taxes, how can this information possibly be construed in such a way that it requires leaseholders to pay additional charges in the form of service charge bills? The wider community benefits, but only leaseholders get a secondary bill to fund these works. Why?

RECOMMENDATIONS

1. In April 2006 the London Leasehold Network launched a manifesto for reform. At a rally in the York Hall Bethnal Green it was supported by the majority of the political parties who accepted an invitation to address the rally. We have kept the manifesto to a few achievable aspirations which should neither have a negative impact on the public purse, nor demand disproportionate primary legislation.

The cornerstone of our manifesto is to extend the capping regime currently covered by the Reduction of Service Charge Directions 1997.

2. Capping was first proposed to parliament in a PMB submitted by former Conservative MP Piers Merchant in 1995. It was drafted into the 1996 Housing Act in an amended fashion and remains in operation.

The detractors of capping have misconstrued it as representing a blunt instrument that is nothing other than a subsidy of private housing.

Piers Merchant's original Bill saw it as a measure that would provide a subsidy of last resort, but its primary purpose was to encourage social landlords to both rationalise their stock and their asset management. It was not intended as a stand alone measure, but to be coupled with various buy back options.

The principle was that the existence of a cap should encourage landlords to carry out more preventative maintenance, thus reducing the necessity for responsive major works and to encourage landlords to spread their spending more evenly across a qualifying period. These measures should reduce the incidence of high bills.

Further measures to allow landlords to buy back or relocate leaseholders would further reduce the necessity for large bills and that the impact on the public purse was minimal.

We would submit that such measures are viable given the will and resources to carry them out and would be entirely consistent with government policy and are generally supported by the report to the Minister from the Social Sector Working Party.

3. Our proposals are relatively simple, feasible and cost effective, alternative solutions are complex, costly, time consuming and disproportionate.

4. We are aware that government officers and local government officers are proposing some solution based on equity release. This has already been rejected by the experts in the field, the Council of Mortgage Lenders.

In our view such a solution would be unsustainable unless future governments continued a housing policy that encouraged sustained house price inflation. This would only ensure that the market remained attractive to property speculators and kept genuine potential homebuyers from the market. This would not achieve current political objectives and we cannot support such measures.

5. In summary, we submit that there is only one course of action that would deliver fairness, be cost effective and comply with current government policy, that is the solution proposed by the London Leaseholder Network.

John Paterson.

For the London Leaseholder Network.

20 February 2007

Supplementary memorandum by the London Leaseholder Network (LMW 02(a))

In responding to your document providing an uncorrected transcript of the one-off hearing on the impact of large service charge bills for major works on leaseholders, I refer you to Q 31 which is an invitation to me to provide you with further information.

I would like you to consider this document as the response to that invitation.

Leaseholders from 18 London Boroughs have alerted the London Leaseholder Network to the facts that they have either incurred or are expected to incur major works bills in excess of £20,000. At least six of these boroughs have intimated that some bills will exceed £50,000. In addition in 2 other London Boroughs namely Bromley and Bexley, leaseholders have confirmed bills between £10,000 and £20,000, both of these boroughs have transferred all of their housing stock to Housing Associations and this may indicate more risk averse landlords. We have confirmed this evidence through sight of relevant section 20 notices (sec 20 1985 L&T ACT)

Apart from the specific examples I named in my oral evidence I would particularly like to mention the £40,000 plus bills that are being incurred in the London Borough of Sutton, these are in low rise properties typically of two storeys, The bills are for a range of works intended to reduce energy consumption and production of CO2 gases, such as insulation , external cladding and double glazing.

It is not possible to quantify the numbers of leaseholders affected by these bills as the landlords are reluctant to disclose the details.

For the last five years officers from 21 London Boroughs have operated what they call a benchmarking club where they share and compare relevant information. This benchmarking club operates under code names as it considers that the information it produces is sensitive. The current chairman of the group is an officer from London Borough of Lambeth called Ashley Parette. We believe that this group has ownership of the most detailed information on the impact of major works charges in London.

A few members of the select committee expressed a view that leaseholders should have been aware of the likely impact of maintenance cost before they bought but it is the case that Parliament has prescribed by regulations (SI 2005 No 1735) the extent of information that Local Authorities are required to provide to RTB purchasers of flats, this information falls short of the information that might alert prospective leaseholders to possible onerous maintenance costs. Relevant information might include knowledge of possible structural or design defects and the fact that some properties of non traditional construction may be life expired or soon to be so. This featured in an important court case, *Izzard v Field Palmer* 1999.

I attach an academic research paper by Sarah Blandy and Caroline Hunter published by Sheffield Hallam University in 2005 which offers an empirical analysis of this issue.

Shifting risks and changing patterns of tenure, by Sarah Blandy and Caroline Hunter.

Paper to be presented at the HSA special anniversary conference 2005, University of York, 6–8 April 2005 <http://www.york.ac.uk/inst/chp/hsa/spring05/papers/BlandyHunter.pdf>

Memorandum by the National Housing Federation

SUMMARY

- Many leaseholders, especially in flatted property, can find themselves subject to very heavy service charges for major works. In some cases it may be difficult or impossible for them to pay these charges. This is a particular problem in local authority housing but also arises in housing association stock.
- Although the Committee has highlighted the impact of Government initiatives such as Decent Homes, in fact the problem can arise from any substantial programme of works, such as, for example, the replacement of lifts or windows.
- Landlords are required by their leases and by the precepts of responsible property ownership to undertake works to maintain the building. The costs of doing so are sometimes unavoidably very high. Like other property owners, leaseholders are obliged to pay for maintenance and upkeep.
- If leaseholders do not pay their due share of the costs, the burden will inevitably fall elsewhere. For local authority and housing association landlords, unless a subsidy is provided from taxation, the cost not met by leaseholders will effectively fall on periodic tenants, who are on average considerably less well-off than leaseholders. We think this is unfair.
- We are sympathetic to the plight of leaseholders, but we feel the emphasis should be not on reducing charges but on extending existing mechanisms, and developing new ones, that will make them easier to pay. Examples include equity release, phased payment, and more use of sinking funds.
- Existing statutory consultation mechanisms are often inconsistent with modern methods of more efficient procurement. The legislation should be updated as a matter of urgency.

1. INTRODUCTION

1.1 This memorandum is the National Housing Federation's submission to the Inquiry by the Communities and Local Government Committee of the House of Commons into the issue of leaseholders and major works.

1.2 The National Housing Federation represents housing associations in England. Between them, our members provide two million homes for five million people. They build better homes and more sustainable neighbourhoods. Housing associations are independent, not-for-profit, social businesses.

1.3 The problem of high service charges because of major works is particularly acute in local authorities, because of their higher proportion of flatted property and the universal entitlement of their tenants to buy their homes. However, it is also significant in housing associations, particularly those that have accepted transfer of former local authority housing and those with substantial older flatted property, especially in London.

1.4 The Committee has raised the issue of high service charges in relation to the Decent Homes Standard and other Government initiatives. While we agree that Government initiatives are often a factor in generating the heavy costs that these charges represent, it is important to stress that high service charges can result from any major works, including those resulting from normal landlord's maintenance and upkeep.

2. THE IMPACT OF HIGH SERVICE CHARGES

2.1 The Federation is well aware of the impact of high service charges on leaseholders, and we can understand their concern, and in some cases dismay, at being presented with demands for very substantial payments. We recognise that, in some cases, leaseholders on relatively low incomes may have extreme difficulty in meeting these charges.

2.2 However, this is not a readily soluble problem. Landlords are obliged under the terms of their leases—as well as as a matter of general good practice—to maintain in good condition the parts of the property for which they are responsible. In the case of flats, this can entail very high costs, for instance to replace windows, roofs, and lifts.

2.3 Flat owners have entered into leases in which they undertake to meet their share of the costs reasonably incurred by the landlord in meeting its responsibilities. While we can understand their concerns when the costs are unusually high, we would point out that paying for works is part and parcel of home ownership, and that owners of freehold homes are equally liable for bearing maintenance costs that may also be very heavy.

2.4 If contributions are not recovered from leaseholders, it is inevitable that they will fall elsewhere. If they are met from the general reserves of a housing association (or the housing revenue account of a local authority), the effect is that the cost is borne by periodic tenants. This would be entirely unfair, particularly since tenants are, on the average, significantly less well off than leaseholders.

2.5 However, we agree that landlords should look sympathetically at mechanisms that make payment easier. One such option is to spread payment over a number of years. This can be done by accepting payment in instalments over a long period, although probably interest would have to be charged. Another possibility is to establish a sinking fund, although under the current law this can be done only if the lease permits it. We suggest that consideration should be given to granting landlords a statutory power, after consultation, to establish a sinking fund to which leaseholders would be required to contribute even if it is not authorised under the lease.

2.6 We also support proposals to facilitate equity release: that is, the leaseholder remortgages the property to obtain funds to pay the service charge. This would be similar to a freehold home owner's remortgaging to pay for major works. If a remortgage is not possible, for instance if the leaseholder is elderly and on a fixed income, other options might be available: funds could be advanced on condition that the property will revert to the lender at the leaseholder's death. It is possible that the financial services industry would be able to bring forward further proposals.

2.7 It has sometimes been argued that another solution is that the landlord should take a legal charge over the property. This would mean that the property could not be sold until the debt was paid. While we do not altogether rule this out as a solution, we have serious reservations about it because many years might pass before the property is sold; indeed, if the owner lets it out, it might never be sold. Moreover, a legal charge does not provide any immediate funding; it merely holds out the possibility that the landlord may be able to recover the cost at some point in the future.

2.8 We strongly support the point made in the Haler Report that the current provisions of the Landlord and Tenant Acts are inconsistent with modern methods of efficient procurement. It cannot be satisfactory that landlords are obliged routinely to ask the LVT for dispensation from the statutory processes. We call on the Government to bring forward as a matter of urgency proposals to update the law on service charges.

2.9 Before moving on to address the specific questions raised by the Committee, we should like to make the point that although the issue of high service charges is one that arises in leasehold property, it is important to be clear that it is not a problem with leasehold tenure as such. Rather, the problem is that, while

leaseholders own the individual flats, someone or something is responsible for the upkeep of the building as a whole. Even in a commonhold arrangement, where the commonhold association is run by the flat owners collectively, it is still possible that the association might agree to undertake works that a minority of individual owners are unwilling or unable to pay for, thus giving rise to exactly the same issues as currently arise in leasehold stock.

3. SPECIFIC ISSUES RAISED BY THE COMMITTEE

We respond to the specific points raised by the Committee as follows.

3.1 *The difficulties experienced by leaseholders in connection with major works initiated under the Decent Homes and other government programmes.*

Work carried out in response to government initiatives is only a part of the problem. We suggest the emphasis should be on the issue of high charges that arise from any cause, including normal maintenance and upkeep.

3.2 *The role of local and central government in commissioning works, ensuring value for money and determining the level of costs to be carried by leaseholders.*

Works should be commissioned in the most cost-effective manner and would rightly be open to challenge if they were not. However, procurement methods have changed dramatically since the current legislation was enacted, and a landlord that followed the existing statutory processes would not be able to enter into long-term contracts that are now recognised as being more efficient for some types of work. In practice, landlords seek dispensation in order to place long-term contracts, but this is hardly a satisfactory state of affairs. The Landlord and Tenant Acts need to be updated to take account of modern procurement.

3.3 *The effectiveness of measures available or proposed to reduce the burden upon leaseholders.*

We respond below to each of the recommendations in the report. However, we wish to stress that reducing the burden on leaseholders should not be the sole, or even the paramount, consideration. Leaseholders have entered into the responsibilities of home ownership, which include, as for any other home owner, the costs of upkeep. The issue is not about reducing that cost but about levying it in a way that makes it easier to bear when leaseholders are in difficulties.

4. HALER REPORT: RECOMMENDATIONS

We reproduce below each recommendation (in *italics*) followed by our comments.

1. **Separate legislation for the social sector?**

The Minister, and Government, should give early consideration as to which of the two alternative positions are to apply and strengthen or amend the legislation accordingly:

- *a level playing field with common legislation applicable to both private and social sector landlords and leaseholders; or*
- *separate legislation for the two sectors.*

We favour common legislation applicable to local authorities, housing associations, and private landlords.

2. **Removal of “public works” costs from recharges**

The issue of directions by the Secretary of State (Part VI, Local Government and Housing Act 1989, as amended) on what items of account are to be regarded as properly within the HRA and “public works” properly to be recharged to the General Fund may assist in substantially reducing recharges to lessees in respect of general estate works and works required by other statutory obligations.

This is an issue relevant only to the local authority sector so we make no comment.

3. **Statutory Consultation**

It cannot be acceptable for Parliament to make requirements with which the landlord cannot comply other than to formally seek dispensation; there is a pressing need to review the S20 legislation and procedures to produce a workable solution in accordance with the wishes of Parliament.

We strongly agree. This is urgent.

4. *To provide new legislation to enable leaseholders*

- *to opt-out from the statutory consultation (S20) process;*
- *to join together as a recognised body to assume management responsibilities for spending decisions, on behalf of the landlord.*

It is envisaged that this should apply subject to the leaseholders having a prescribed percentage in the block, say 15%–20% and their delegated control to exclude issues such as statutory disrepair and emergency works.

We are not persuaded by these proposals.

Section 20 is designed for the protection of leaseholders and they are unlikely to agree to opt out from it. While an opt-out might be useful in some circumstances, we suggest a better approach would be to amend section 20 so that it permits the landlord, after due consultation, to enter into long-term arrangements for services and works and that the resulting costs should be recoverable from leaseholders provided they are properly incurred under the agreed arrangement even if they are not quantifiable at the outset.

We do not agree that leaseholders representing only a small proportion of the building should be allowed to take over management responsibilities for the whole of it. This would risk marginalising the legitimate interests of other occupants, including periodic tenants, as well as the landlord.

5. **Capping of major works charges**

Capping of service charges may appear the only immediate solution to present problems.

The landlord-side's opposition to capping, on financial grounds, makes clear that they would not, was [sic] capping to be introduced, favour any discretion per authority but a mandatory scheme across the board. The following method is suggested: the council caps the leaseholder's bill at the designated level, reports the consequences to Government which then allocates specific subsidy to cover the ensuing extra interest and capital repayment costs.

We are opposed to capping, and not only on financial grounds as the report suggests. Leaseholders are subject to the same obligation as any other property owner to pay for maintenance and upkeep. If they fail to do so, the cost will inevitably be borne elsewhere: by periodic tenants, for example, or the taxpayer. We think this is unfair.

6. **Exchange sale scheme**

There would be considerable merit in re-introduction of the Exchange Sale Scheme to allow social landlords to strategically direct problematic isolated leasehold units and concentrate them in blocks where leasehold tenure could form a majority.

While there may be value, for other reasons, in concentrating leasehold tenure as this proposal envisages, we do not think it is a solution to the issue of high charges. If a block of flats requires new lifts, for instance, or a new roof, the costs are inherent in the nature of the building, not the form of tenure, and the share borne by any individual leaseholder is likely to be the same.

7. **Targeted buy-back**

The incentive to buy back already exists but the cash is not readily available for most local authorities—in these circumstances a solution would be to allow local authorities to offset 100% of their buy back costs against RTB receipts in respect of approved buy back schemes.

For housing associations, RTB receipts are used for new housing and other social objectives. Buy-backs would have to be justified against other potential uses for the funds involved.

8. **Reverse staircasing**

Reverse staircasing should be open to all social sector lessees, irrespective of whether they were original RTB or shared-ownership purchases but, as with proposals for capping, be restricted to resident-lessees.

Reverse staircasing may sometimes be an option but, as for buy-backs, the cost to the landlord would have to be justified against other potential uses for the funds involved.

9. **Equity release**

To encourage local government in the sponsorship of a new national company to provide equity release monies from private finance.

While we support various forms of equity release, we are not convinced of the case for a new national company. This business should be undertaken only if it is financially viable, in which case it should be attractive to the existing lending industry.

10. Discretionary and mandatory loans

Government to prescribe regulations to standardise schemes for discretionary and mandatory loans for service charges and to require compliance by social sector landlords.

We are concerned that standardising schemes might cause inflexibility. We think that a range of options should be considered, including the acceptance of payment over a period of years as well as more formal loans. It should be noted that housing associations are not financial institutions and would not always be in a position to give loans.

11. Equity reversion loans

To encourage local authorities to utilise existing powers in provision of equity reversion loans.

This is an issue relevant only to the local authority sector so we make no comment.

12. Redefine “essential works” to assist benefit payments

The definition of “essential works” to be expanded to include works that are part of Decent Homes programmes for the purpose of payments by the Benefits Agency toward interest on loans.

We agree.

13. Sinking funds

If sinking funds should be the norm for social sector service charge payers then legislation will be required to change Housing Revenue Account rules and to provide deemed inclusion of sinking fund contributions in all leases.

An alternative approach would be the encouragement of individual savings schemes, administered by the landlord; the scheme would require ring-fencing rules that the saved sum would only be available for service charge costs and was assignable with the dwelling. This could be through a Government initiative and model scheme.

We agree that landlords should have a statutory power (but not a duty) to establish sinking funds, even where there is no provision for it in the lease. However, it should be noted that the current tax treatment of sinking funds is unfavourable and can deter landlords and tenants from establishing them.

14. Code of management practice

The mandatory application of a code of management practice, approved under 1993 Act powers, to social landlords; compliance to be through Audit Commission Housing Inspectorate.

We agree, subject to due consultation.

15. Advice and support services

That social sector landlords be required to fund local leaseholder advice and support services, ideally through a service charge levy from leaseholders. There is a precedent for this in the funding arrangements for the Housing Ombudsman whereby the service is funded by the end-user.

We do not agree. Social sector leaseholders already have access to the relevant Ombudsman if they feel they have been unfairly treated (in addition to their other legal remedies). Leaseholders would almost certainly object to a further levy.

16. Leaseholder impact assessment

That, every case relating to HRA expenditure arising from Government directives, initiatives or new legislation, to be accompanied by a formal leasehold impact assessment as an integral part of the process.

This is an issue relevant only to the local authority sector so we make no comment.

Memorandum by the London Borough of Hammersmith and Fulham (the "Council")

1. INTRODUCTION

1.1 The Council is a London borough and, as such, is a local housing authority. It has responsibility for management of residential property including some housing estates and residential blocks.

1.2 It has been requested by the joint clerk of the Communities and Local Government Committee to respond to seven questions posed in a letter dated 8 February 2007. This memorandum contains those responses.

2. HAMMERSMITH AND FULHAM COUNCIL V NRI (QUESTION 1)

2.1 Question one requests details of the judgment handed down by His Honour Judge Brian Knight QC at 10.00 am on 20 January 2004 in the Central London Civil Justice Centre and the wider implications for the council.

2.2 The proceedings were brought at the council's expense in order to resolve concerns over the amount of the costs of refurbishment works which would be passed on to leaseholders as part of the service charge under their leases. The question at issue in the test case was the council's entitlement to recover charges for works which amounted to (or contained significant elements of) improvements as opposed to repair. Leaseholders also contested the reasonableness of the costs incurred in carrying out the works.

2.3 The disputed works included the fitting of a new pitched roof, enclosure of the external staircase, provision of a glazed canopy, installation of a controlled access and the installation of new front doors.

2.4 The arguments centred over the interpretation of the council's standard right-to-buy lease. The essential questions were:-

- (a) whether, and in what circumstances, the council might recover charges in respect of works; and
- (b) whether, in the particular circumstances of the case, the council was entitled to recover the costs of the works.

2.5 The council argued that on the construction of the lease it was entitled to recover the costs of renewal and improvement works as, in its absolute discretion, it considered necessary, and that it was entitled to conclude that the works were necessary in this case.

2.6 The leaseholders argued that the cost of the disputed works could not be recovered because the lease did not create an obligation on the Council to carry out improvements; alternatively, that any right to carry out improvements arose only where such improvements are necessary.

2.7 The next question was whether the disputed works were properly considered necessary. The court held that the test is whether the landlord could reasonably have come to the conclusion that the proposed works were beneficial. In order to decide this the council should have considered all the relevant facts including (but not limited to):

- (a) the purpose or function of the proposed works;
- (b) whether the purpose and function could be achieved by more economical works;
- (c) whether the cost of the proposed works was disproportionately excessive in relation to the benefit;
- (d) the relative mix of occupiers of a building and the relative financial position of the occupiers and the landlord; and
- (e) any relevant policy on discounts or of capping liability.

2.8 The judge held that works of renewal and improvement were capable of being an obligation and, therefore capable of being chargeable under the terms of the lease. Whether they constituted an obligation and could be charged for depended on the meaning of the word "necessary" and the facts of each particular case. The judge found that:

- (a) that the council was, on the construction of its leases, entitled to charge leaseholders for works of improvement if it can demonstrate that they are necessary (ie beneficial).
- (a) on the facts of the case, the council was unable to demonstrate that the disputed works were necessary and therefore they were not recoverable.

2.9 The case established that whilst the council is entitled to charge for improvement works it must be able to demonstrate that they are beneficial and that the council has carried out an appropriate evaluation which demonstrates that to be the case.

2.10 The current Decent Homes contracts are structured to ensure that only works that are necessary are included in the scope of works, the views of all the residents are taken on board and where new services may result, for example controlled access, a ballot is held. Consultation with leaseholders is better than previously with leaseholders being involved in the selection of contractors, project working groups and post work surveys.

3. CHARGING POLICY FOR LEASEHOLDERS (QUESTION 2)

3.1 Given that the council's standard lease makes provision for the recovery of the cost of improvements (on the bases outlined in section 2 of this memorandum), it has a fiduciary duty to collect those charges from leaseholders. Accordingly, the policy of the council, and the reasons for that policy, are largely controlled by law.

3.2 The council is investigating the possibility of allowing some leaseholders to "opt out" of some elements of the Decent Homes programme, but this too has limitations in respect of the leases and the Council's liability on health and safety in respect of its buildings, and public liability.

3.3 The council also has to take into account the integrity of the structure of the building and the interests of other occupants to ensure any failure to repair or maintain the individual flat does not adversely affect the building. There could also be some significant costs in operating an "opt out". Leaseholders would have to contribute a proportion of those costs, thereby reducing any saving they might make through the policy.

3.4 Hammersmith and Fulham Homes' (the ALMO's) approach reflects that of the Council. The ALMO working closely with the council in considering and developing schemes that could assist leaseholders wherever possible.

3.5 The ability to cap charges is limited to the Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997. This is limited to a reduction in charges to no less than £10,000 and has only been applied in five cases to date. As yet, there have been very few charges in excess of £10,000 to leaseholders but this will increase as the Decent Homes programme gets underway. Any reduction is subject to a Hardship assessment.

4. PAYMENT OPTIONS FOR LEASEHOLDERS (QUESTION 3)

4.1 The council is sympathetic to the plight of leaseholders facing large bills for major works. The amount of discretion that a local authority has is very limited, but every effort is made to ensure that leaseholders are able to spread the costs over a number of years.

4.2 At present, the council allows leaseholders to enter into a repayment plan for the charges spread over a five year period at a low interest rate. However consideration is being given to allowing repayment over ten years for some works. The council is constrained by various financial regulations and some Housing Act loan regulations. In agreeing any low interest repayment plan the council must take into account its fiduciary duty and the impact such an arrangement may have on other residents in the borough.

4.3 The council will also consider a deferred payment in extreme cases of hardship with the debt being paid on disposal of the property at a future date. Such an agreement will be interest bearing.

5. NUMBER OF LEASEHOLDERS AFFECTED (QUESTION 4)

5.1 It is considered that approximately 2,200 leaseholders will be affected by the Decent Homes programme. This is approximately 50% of the boroughs leaseholders.

5.2 On average, it is estimated that leaseholders will face charges of between £15k-£20k. In a few cases this may be higher due to a greater need for structural works. A typical leaseholder bill for a scheme incorporating the replacement or overhaul of major elements such as windows and roof covering as well as general fabric and communal repairs would be between £10k and £20k, depending on the size of block and number of units to which costs are apportioned. In exceptional cases charges may exceed £20k due to, for example, significant structural works.

6.0 COUNCIL'S VIEWS ON THE EXTENT THAT ITS POLICIES ARE CONSISTENT WITH OTHERS (QUESTION 5)

6.1 The ALMO has been exchanging information with a number of other London boroughs and Almo's to ensure that they are offering as many opportunities as possible to ensure leaseholders receive as much assistance as it is possible to give under current regulations.

6.2 It appears from the responses received that the Council and the ALMO's current policies and practices are in line with those of other councils and Almos.

6.3 In particular, the level of consultation undertaken by the ALMO is significant and measures up to that provided by other organisations doing large high cost works where leaseholders are affected. Consultation meetings include a separate section for leaseholders, and leaseholders are also able to arrange a personal interview to discuss their concerns. Leaseholders are involved in the project group whilst the works are in progress and have been involved in selecting the contractors for the Decent Homes programme.

6.4 Both the council and the ALMO are continually working to improve the position for leaseholders wherever possible.

7. SHOULD THE COUNCIL OR THE ALMO BE DOING MORE? (QUESTION 6)

7.1 Both the council and the ALMO are open to any suggestions and solutions that will help leaseholders deal with these high charges. However there are constraints placed upon them by the lease, legislation and regulations that limit the assistance they are able to offer. There must also be careful consideration given to the impact any scheme may have on other residents of the borough through any impact on council tax or other services.

7.2 The council and the ALMO are continuing to analyse possible options that might ameliorate any adverse financial impacts of the Decent Homes programme upon leaseholders. They would welcome the opportunity to provide further evidence and information to the committee once the results of this work emerge, in particular, highlighting potential action by central government that would facilitate these objectives.

8. GOVERNMENT ACTION TO ASSIST (QUESTION 7)

8.1 Any relaxation of regulations governing the opportunity to offer loans, extended repayment plans, deferred payments etc would allow the council greater flexibility in providing manageable repayment arrangements for leaseholders.

8.2 In addition, a review of the Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997, to include Decent Homes in the scheme could limit leaseholders' liability to £10k for any works undertaken as part of the Decent Homes programme. However, the reduced anticipated income from leaseholders would either have to be funded by additional borrowing or would impact on the scope and delivery of the programme.

8.3 The calculation of ALMO funding by Central Government is based on rentable dwellings only and assumes that the cost of work to leasehold properties is funded through leasehold contributions. In LBHF, it is assumed that £15.5 million of rechargeable work will be undertaken and recovered from leaseholders.

Memorandum by the Department for Communities and Local Government

INTRODUCTION

1. The Committee has asked for a memorandum that addresses three points:
 - (a) the difficulties experienced by leaseholders in connection with major works initiated under the Decent Homes and other government programmes
 - (b) the role of local and central government in commissioning works, ensuring value for money and determining the level of costs to be carried by leaseholders
 - (c) the effectiveness of measures available or proposed to reduce the burden upon leaseholders.
2. It has also asked that the memorandum should cover a recent Leasehold Valuation Tribunal case, *Continental Property Ventures v White*.

COUNCIL LEASEHOLDERS

The Right to Buy scheme

3. The Right to Buy scheme was introduced in 1980. It enabled local authority tenants who had been public sector tenants for a specified period (initially 3 years, reduced to two years in 1984 and raised to five years in 2005) to buy the houses or flats that they rented. They were entitled to a discount on the market value of the property, calculated on the basis of the number of years that they had been tenants:

1980 — houses and flats—33% after 3 years rising to 50% after 20 years

1984 — houses and flats—32% after 2 years rising to 60% after 30 years

1987 — same for houses; flats raised to 44% after 2 years rising to 70%.

4. However, these entitlements were subject to a cash limit, set by the Secretary of State at £25,000 in 1980 and raised to £35,000 in 1987 and again to £50,000 in 1989. By 1999 (when lower regional cash limits replaced it), that limit was equivalent to around 85% of the average value of a local authority property in London (then around £58,500). The maximum then available to a tenant who wished to buy a council flat (70%) was therefore worth around £41,000.

5. By 31 March 2006, more than 1.7 million tenants had bought their council homes in England; 286,000 of them in London. Many of them have seen the value of their homes increase significantly since buying. Many who exercised their Right to Buy have subsequently sold their homes—in several London Boroughs, between 35% and 40% of current council leaseholders have bought their flats on the open market.

6. Where tenants buy their homes under the Right to Buy scheme, section 125 of the Housing Act 1985 requires landlords to give them (among other information) an estimate of the service charges likely to be payable during the five years following completion of the sale. It also provides that this estimate may not be exceeded during the five-year period, except by the addition of a specified allowance for inflation.

DIFFICULTIES EXPERIENCED BY LEASEHOLDERS FACING HIGH MAJOR WORKS BILLS

The rights and responsibilities of leaseholders

7. When a person becomes a homeowner, whether via the open market or at a discount from a local authority or a housing association, they assume certain responsibilities and obligations. These include maintenance of the property that they have bought, be it a house or a flat. The formal obligations of flat-owners (“leaseholders”) depend in the first instance on the terms of their leases. Generally, these include an obligation to contribute towards the repair, maintenance and refurbishment of the block as a whole by paying charges in respect of major works. These contributions are normally determined by reference to the number of bedrooms in their flat.

8. As mentioned above, when tenants buy their homes under the Right to Buy scheme, they are entitled to estimates of the service charges likely to be payable during the next five years. Where people buy ex-council flats on the open market, they should be made aware that works were to be carried out to the blocks by means of a pre-assignment questionnaire obtained by their conveyancing solicitor. The Lenders Handbook issued by the Council of Mortgage Lenders states (section 5.10.8):

“You should enquire whether the landlord or managing agent foresees any significant increase in the level of the service charge in the reasonably foreseeable future and, if there is, you must report to us” (ie, the lender).

Similar advice is given by the Law Society to its members.

9. Leaseholders have rights under the Landlord and Tenant Act 1985 (as amended) to challenge works proposed by their landlords and the charges arising from those works. Applications can be made to a Leasehold Valuation Tribunal (LVT) to determine both liability to pay and what would be a reasonable sum to pay as a service charge, for any particular works. In coming to a decision upon liability, an LVT will have regard to the works which the leaseholder is obliged to pay for under the terms of his lease. The question of whether service charge amounts are reasonable will depend on each property’s particular requirements and what work may be necessary to maintain and where relevant, improve it.

10. In some cases, following the February 2006 Lands Tribunal decision in *Continental Property Ventures Inc v White*, it may be possible for a leaseholder to achieve reduction of the amount payable in respect of repairs where it can be proved that damage has been caused by the landlord’s neglect of its duties under the lease, and that the eventual repair bill would have been lower if the landlord had more promptly fulfilled such duties. However the reasoning in this case is only applicable in limited circumstances.

11. New provisions introduced in October 2003 built upon the existing rights of tenants, including council leaseholders, to be consulted about the expenditure that makes up their service charges. It was felt that all tenants and leaseholders should be better informed and have greater input before significant sums of expenditure were committed for these purposes. They are now given the opportunity to comment upon their landlord’s intention to carry out works or enter into a long term agreement and greater rights to nominate contractors to help improve competitiveness in the tendering process. However these rights are restricted in certain instances to take account of public sector procurement rules requiring contractors for works to either be on an approved list or eligible for inclusion on it, as well as of European Union procurement rules.

Government assistance for leaseholders

12. In 1992, the Government introduced powers for local authorities to offer loans to assist leaseholders in paying service charges. These powers are described fully later in this memorandum.

13. Research published in 1995 showed that while the great majority of people who had bought their council flats saw this as good value for money, a small proportion were in particular difficulties with service charges which were often much higher than they had expected when they bought. Sometimes, costly works were needed to maintain or repair large system-built blocks, and leaseholders received little or no benefit from the work. In some cases, a landlord had received special assistance from a central Government programme (for example, Estate Action) to carry out the works, but the leases it had granted still obliged it to charge leaseholders.

14. The Department of the Environment issued a consultation paper in June 1996 explaining how the Secretary of State planned to use powers proposed in the Housing Bill then before Parliament which would enable him to issue directions allowing, or in some cases requiring, social landlords to reduce charges to their leaseholders. Having considered the responses, the Government introduced two sets of directions which came into force on 25 February 1997:

- the Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997 (the coverage of these Directions was extended on 15 August 1999 and again on 17 January 2000).

- the Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997.

15. These directions are described more fully later in this memorandum.

16. From 1 April 1999, following consultation, the Government introduced a financial incentive to assist local authorities to buy back properties from people who were in arrears with service charges or were facing financial difficulties in maintaining their homes. The means of support are described more fully later in this memorandum.

17. The Government considered that these measures—service charge loans, service charge capping and financial support to landlords that bought properties back—addressed the difficulties which its research and consultation had brought to light.

18. No further concerns were brought to its attention until August 2004, when an edition of the BBC's "Newsnight" programme included an item on leaseholders in London and high service charge bills arising from works undertaken to meet the Government's Decent Homes target. There has been further media interest since then. In addition, seven Members of Parliament have written to Ministers on behalf of constituents who are council leaseholders.

Research into the impact of Decent Homes works on right to buy leaseholders

19. In response to the issues raised in the media, the Department commissioned research into the impact of the cost of repairs on right to buy leaseholders. The field work for this was delayed by the local and general elections of May 2005. The report was published in November 2006 and is available from the Communities website at: <http://www.communities.gov.uk/index.asp?id=1504280>

20. The research explored:

- the typical major works programmes that authorities were undertaking;
- the extent to which works are to meet the Decent Homes standard and which go beyond the Decent Homes standard and in what circumstances;
- authorities' policies in relation to charging leaseholders for these works;
- whether costs are in line with Communities and Local Government's expectations of standard costs under the Decent Homes programme; and
- the extent to which costs are influenced by the scale and approach to undertaking the repairs, for example undertaking works on an ad hoc basis or obtaining significant economies of scale with large contractors over a large number of stock and estates.

21. Its key findings were that:

- there has been an increase in major works service charges as local authorities tackle the backlog of disrepair. But although the Decent Homes target has been a catalyst in ensuring local authorities address the backlog of repairs, the underlying issue is the increased capacity of authorities and housing associations to deal with them. Authorities are able to do more, more efficiently and more effectively, but the consequence of this is that in the short-term bills are higher. In the long-term the quality of work is likely to be better and the costs will be lower;
- the Decent Homes standard is not necessarily dictating the level of works undertaken. It does not include elements such as lifts and cladding, which will need to be addressed in dealing with the backlog of repairs in blocks of flats. These can be expensive, and lead to higher service charge bills in the short term, but would be more expensive if piecemeal repairs were carried out over time. Authorities are also seeking to address tenant aspirations and deliver sustainable communities;
- the research evidence suggests the number of leaseholders faced with high bills, and the number that face hardship as a result, are modest. Average bills are well below £10,000 in most cases, although a small minority of leaseholders are faced with very considerable bills. In some of these cases the income and ability to borrow against the property may be insufficient to finance costs. In the majority of cases, however, high bills are associated with high value properties, many of which have been sold on the open market since the original Right to Buy purchase; and
- where there is potential hardship the research suggests that there are differences in policy and practice between local authorities in addressing this.

22. It recommended that:

- (a) the information held by the Department about the scale and nature of local authority residential leasehold ownership is improved;
- (b) the quality of information held by local authorities in relation to leasehold properties is improved;
- (c) the Department consider providing further guidance on the standards of works to be carried out in flatted accommodation and to clarify the position in relation to the decent homes standard; and
- (d) the Department provide further guidance in relation to defining hardship and the situations where deferring or easing charges should be considered.

23. The information held by the Department about the scale and nature of local authority residential leasehold ownership is entirely dependent on the quality of information held by local authorities. The Government's policy is to reduce the information burden it places on local authorities, and we therefore only collect information where necessary. We will consider what information about leaseholders needs to be collected by local authorities and reported to the Department at the conclusion of the wider review of leaseholder service charge issues (see below).

24. The Department will consider providing further guidance on the standards of works to be carried out in flatted accommodation and to clarify the position in relation to the decent homes standard when we revise the Decent Homes guidance.

25. The current options for deferring or reducing service charges are being considered as part of the Department's review of leaseholder service charge issues.

The Department's review

26. Since February 2006, the Department has been reviewing the issues raised by high major works charges. A survey conducted for the Department by the Association of London Government showed that up to May 2006, of the 108,000 council leaseholders in 23 London Boroughs, around 5,200 had received major works bills of £10,000 or more. Of those, around 1,300 bills exceeded £20,000. Some 300 of these bills were capped at £10,000 under the 1997 Mandatory Directions.

27. Officials have met the following stakeholders with the aim of establishing what is happening and where, and of obtaining their views:

- local authority landlords in London (the then Association of London Government, now London Councils) and elsewhere (the Local Government Association)—in March and April 2006;
- the Leasehold Advisory Service (LEASE)—in April 2006;
- the Council of Mortgage Lenders—in May 2006;
- leaseholder representatives from London and elsewhere—in May 2006;
- the Home Improvement Trust—in June 2006;
- the London Rebuilding Society—in September 2006;
- London Boroughs housing directors—in September 2006;
- London Councils and the Council of Mortgage Lenders—in September 2006; and
- the Association of Independent Financial Advisers—in January 2007.

A meeting with the Intermediary Mortgage Lending Association is scheduled for 26 February 2007.

Non-Departmental reviews

28. In 2005, the Association of London Government set up a working group on major works bills. After considering the issues raised by high bills, it made six recommendations to Government:

- introduce a system of tax-free savings accounts to help leaseholders to save to pay for future works;
- increase its financial support for buy back schemes and enable local authorities to buy back shares, which would be cheaper than outright repurchase;
- facilitate negotiations with lenders on a suitable equity release scheme;
- allow local authorities which delay payment until properties are sold to take a share of the resale value instead of charging interest;
- promote greater involvement of leaseholders in the design and scale of works (if this encourages payment in full); and
- provide Audit Commission guidance on what services should be charged to leaseholders.

29. In January 2006, the then Office of the Deputy Prime Minister set up the Social Sector Working Party (SSWP) of landlord and leaseholder representatives. The SSWP was subsequently asked to provide recommendations for action on the issue of high service charge bills. A report on this was submitted to Ministers on 5 February 2007. Its recommendation of a capping regime that is universal except for buy-to-let owners reflects the views of leaseholder representatives; the landlord representatives oppose capping on financial grounds, but they would accept it if the cost was met by Government. The report also recommends the further development of the same payment options that have been considered by officials. It additionally proposes a review of consultation procedures, the removal of "public space works" costs from leaseholder bills; and the establishment of sinking funds for local authority leaseholders. Consideration is also given to the idea of putting in place a separate legislative regime for social sector leaseholders, although this did not have the support of leaseholder representatives.

THE ROLE OF LOCAL AND CENTRAL GOVERNMENT IN COMMISSIONING WORKS

30. The Government expects local authorities to keep their housing stock in a reasonable state of repair and to meet the Decent Homes standard by 2010 (unless they have renegotiated the deadline with the Department). However, it is for local authorities to decide:

- the level of work that needs to be carried out;
- the cost of the work; and
- how they commission it

within current procurement guidelines.

31. The scale of the work will depend on the current condition and type of stock and, as noted in paragraph 13 above, will not always be driven by the Decent Homes standard. The leaseholder service charge research found that in the majority of cases the view of local authorities was that refurbishment works should not simply meet the Decent Homes Standard but should be designed to meet a longer term sustainable standard and to begin to meet resident aspirations and provide sustainable communities. In addition, flatted stock generally generates higher works costs, as do listed buildings and those in conservation areas which have to be treated differently from other stock.

32. From discussions the Department has had with local authorities, it is clear that they also have to take a long term view when planning major works. In a block of flats, this is particularly important where it is cost effective to carry out a programme of work, to all flats at one time rather than carrying out work to individual flats over a longer period. For example, where scaffolding is required, it would be more expensive to take down and re-erect scaffolding for each individual piece of work than to complete all the work at one time. The Leasehold Valuation Tribunal has upheld several cases where local authorities have argued that it was reasonable to carry out a package of work at one time.

33. It is also clear that the health and safety requirements that contractors have to meet when working in the public sector can make work more expensive. Some authorities do invite contractors suggested by leaseholders and tenants to tender for work, but such contractors must meet the standards and conditions specified by the local authority.

34. Leaseholders have the right to be consulted about works where:

- (a) long-term agreement is to be entered into by the landlord, where the agreement is for more than 12 months and the amount payable by any leaseholder/tenant in any of the accounting periods relevant to the agreement amounts to more than £100; or
- (b) the works which are to be undertaken, either separately or as part of a long-term agreement, where the amount payable by any tenant is more than £250.

Failure by the landlord to consult (without reasonable excuse) or to gain a dispensation from consulting from a leasehold valuation tribunal will mean that the landlord may not recover any more than the £100 or £250 referred to from each leaseholder/tenant.

35. All local authorities should have well documented complaints procedures, and leaseholders should be aware of who to contact with any complaints about costs or quality of work. Any major repairs programme is invariably preceded by a public meeting, and a clerk of works is always appointed to monitor the quality of work.

36. Local authority housing functions are also regularly inspected by the Audit Commission to make sure the public is getting the best possible value for money from council services. To do this, it uses a framework of key lines of enquiry (KLOEs). These provide consistent criteria for assessing and measuring the effectiveness and efficiency of housing services. KLOEs have three overarching themes:

- access;
- diversity; and
- value for money.

37. For Housing services, there is a KLOE which deals specifically with the management of leasehold and shared ownership housing and another which deals with stock investment and asset management, including capital improvement, planned and cyclical maintenance, major repair works.

38. To encourage social landlords to increase efficiency, reduce costs and improve the delivery of capital works, we have encouraged them to set up consortia to procure some or all of their capital and maintenance programmes. These consortia often use framework contracts which establish the terms and conditions under which subsequent contracts can be placed by members.

39. Leaseholders should benefit from these contracts. However, we recognise that such contracts can present challenges to consultation with leaseholders. The framework contract is entered into before there is any commitment to do work on particular homes. Social landlords who join an existing consortium do not have a chance to consult tenants on existing framework contracts held by that consortium. And in placing orders under a framework contract, rules restrict the amount of further negotiation allowable.

40. We believe that arrangements for involving leaseholders should be at least as effective when the services are delivered through framework contracts, but a different approach to involvement may be required. We are working with the National Change Agent for social housing capital works to develop good practice on consultation with leaseholders about framework contract arrangements.

THE EFFECTIVENESS OF MEASURES TO REDUCE THE BURDEN ON LEASEHOLDERS

41. A number of measures are in place to help leaseholders by limiting, delaying or deferring the amounts of service charges to be paid or otherwise assist in their payment. In addition to the limits on charges that apply for up to five years after a Right to Buy sale (as set out above):

- mandatory capping limits the charges that can be applied for certain publicly funded schemes;
- discretionary capping enables local authorities to reduce charges in a number of circumstances, in particular taking account of exceptional hardship that would follow;
- local authorities have powers to buy properties back, to make loans, and to enable payments to be made in instalments; and
- finally, a number of schemes provide for funding service charges through the provision of equity release loans secured on the property concerned.

Mandatory capping

42. As mentioned above, the Government in 1997 capped service charges, using its powers under sections 219 and 220 of the Housing Act 1996 to make the Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997. These:

- *require* landlords to charge no more than £10,000 for a property over any 5-year period for works carried out with assistance from the Single Regeneration Challenge Fund or the Estates Renewal Challenge Fund, where the assistance was bid for on or after 25 February 1997. But they can charge more than £10,000 if the benefit to the leaseholder from the works exceeded £10,000
- *allow* landlords to reduce service charges below £10,000 where this amount was specified in an application for assistance from the Single Regeneration Challenge Fund or the Estates Renewal Challenge Fund, and the Secretary of State agreed that the charge should be the reduced amount.

From 15 August 1999, the Directions also applied where works were funded under the New Deal for Communities programme. From 17 January 2000, they also applied where works were funded under the Housing Revenue Account Private Finance Initiative.

43. However, since 1997 the programmes specified in these Directions have changed or ended:

1. Single Regeneration Budget Challenge Fund—in April 2002, subsumed into Regional Development Agency Single Pot.
2. Estates Renewal Challenge Fund—ended in 2000–01.
3. New Deal for Communities and Private Finance Initiative—still in operation.

44. The “Decent Homes” programme includes the following funding sources:

- Private Finance Initiative (PFI);
- stock transfer; and
- ALMOs (Arms-Length Management Organisations).

New Deal for Communities funding is sometimes used to complement, rather than replace, mainstream funding for delivery of decent homes, but only to allow Decent Housing activity to happen earlier than would otherwise be possible. In practice, charges to leaseholders arising from Decent Homes spending are only capped in respect of PFI funding.

45. The Mandatory Directions are therefore less relevant now. They were based on the principle that if the Government was funding a scheme by means of a direct grant, it was inappropriate to require leaseholders to contribute as their leases required, because this would mean that the works were funded twice over. However, since 1997 the focus of support has switched from direct grant funding towards borrowing approvals. This means that schemes are no longer being part-funded from general taxation, but are instead being funded from local resources. If leaseholders do not pay their share, the balance has to be met from other programmes, at the expense of social tenants and council taxpayers.

Discretionary capping

46. Local authorities have discretion to cap service charges, under the Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997. These allow them to reduce or waive service charges:

- for works carried out with assistance from Estate Action, City Challenge, the Single Regeneration Budget Challenge Fund, or the Estates Renewal Challenge Fund, where the assistance was applied for before 25 February 1997;
- for works even if these did not receive such assistance, so that service charges do not exceed £10,000 for a property over any 5-year period.

(The Estate Action programme ended in 2004–05 and City Challenge ended in 1998.)

47. In deciding whether to cap charges, landlords must have regard to the following criteria:

- (a) any estimate of the costs of the works of repair, maintenance or improvement notified to the leaseholder before he or she bought the lease;
- (b) whether the purchase price paid by the leaseholder took account of the costs of the works;
- (c) any benefit which the landlord considers the leaseholder has received or will receive as a result of the works, including increases in the value of the property, its energy efficiency and its security, or any improvement in services or facilities;
- (d) whether, upon receipt of an application by a leaseholder, the landlord considers that the leaseholder would suffer exceptional hardship in paying the service charge, based on the criteria below; and
- (e) any other circumstance of the leaseholder which the landlord considers relevant.

48. In considering a request that service charges should be reduced because of exceptional hardship, the landlord must have regard to:

- (i) whether the flat is the leaseholder's only or principal home;
- (ii) the total amount of service charges paid since the leaseholder's purchase of the property;
- (iii) the amount of service charge payable in the year in which the leaseholder applies for a reduction on the grounds of exceptional hardship;
- (iv) the financial resources available to the leaseholder;
- (v) the ability of the leaseholder to raise funds to pay the charge;
- (vi) the ability of the leaseholder to pay the charge if the landlord was to extend the repayment period; and

vii. any other circumstance of the leaseholder which the landlord considers relevant.

49. The landlord would be likely to be considered reasonable by the courts if it also took into account how any reduction of charges fits with the legislation or other rules under which it operates and, in particular, the balance between exercising its discretion to reduce service charges and its general fiduciary duty to local taxpayers and others, including its tenants.

50. It is open to individual leaseholders to ask their landlord to consider exercising its discretion in their case, whether or not the request includes a formal application for the landlord to consider whether the leaseholder will suffer exceptional hardship.

51. The Department has been told that local authorities are reluctant to use their discretion to cap leaseholder service charges, because the money to do so would have to be found from other local programmes and hence at the expense of social tenants and council taxpayers.

Buying properties back

52. Local authorities have wide powers to buy back properties. The Government meets 35% of the cost of buying properties back where this exceeds £50,000 in a year. It does so by reducing the amount of capital receipts that the authority would otherwise be required to surrender for pooling and redistribution to other authorities and programmes.

Service charge loans and deferred payment options

53. Local authorities' powers to offer loans on right to buy properties are in the Housing (Service Charge Loans) Regulations 1992 made under sections 450A, B and C of the Housing Act 1985:

- (a) a right to buy purchaser has a right to a loan in respect of service charges within specified cash limits (for both the service charge and the loan) for a period of 10 years after grant of the lease
- (b) the purchaser must claim this right within 6 weeks of the demand for payment of the service charge concerned

- (c) c. the terms of the loan (other than interest) must be those set out in the Regulations, which include:
- (i) repayment of the amount secured in equal instalments of principal and interest combined; and
 - (ii) a repayment period of 3, 5 or 10 years depending on the amount borrowed, with an option for the borrower to choose a shorter period. the interest rate(s) are governed by schedule 16 to the Act; ande. the local authority's administrative charge is limited to £100.

54. Where the right to a loan does not apply, a local authority may make a loan in respect of service charges to its own leaseholder, on such terms as it may determine. The rate of interest payable on the loan "shall be such reasonable rate as may be determined by the lender". There is no limit on the amount of an administrative charge.

55. The form that a local authority loan must take, whether mandatory or discretionary, is that of leaving the whole or part of the service charge(s) outstanding. Where the sum concerned would exceed the statutory cash limits for a mandatory loan, the local authority may use a discretionary loan to cover the rest of the amount—so that different terms, including interest rates, may apply to different portions of the sum loaned. Both mandatory and discretionary loans must be secured by a mortgage of the flat in question. There is no creation of a statutory charge, but a mortgage would normally be in the form of a registered charge.

56. Local authorities may decide to allow leaseholders to pay their bills by instalments, or over a period of (typically) 3-5 years. Some offer interest-free periods. They may also decide to defer payment until the property is sold, in the meantime charging interest, using their power to offer discretionary loans.

Equity release

57. Some local authorities offer leaseholders the Houseproud equity release product developed by the Home Improvement Trust for elderly home owners who find it difficult to afford to keep their homes in good repair. However, take-up has not been great and so the Department is considering ways of accelerating the take up of loans and social equity packages to finance home improvements for vulnerable householders. In doing so, we will take account of the findings of a report on equity release prepared for us by DTZ Pieda. It is too soon to say exactly what will be taken forward from the report. Decisions will be reached in the context of the Comprehensive Spending Review.

CONCLUSION

58. The Government's research and review have confirmed that a minority of council leaseholders have received high major works bills. There are several options available to help them to pay these bills and, on the evidence received by the Department, most leaseholders are using these options. They also have rights to challenge bills.

59. However, we acknowledge that the position is complex. We are therefore looking at ways of making the present system more effective. In particular, we are considering ways of encouraging landlords to use the powers already available to them more flexibly, having regard to individual circumstances and, working with other agencies and with lenders, ways of increasing access to the equity loan and equity release products available in the market.

Memorandum From Pauline Walton, Norwich Leaseholders' Association

EXECUTIVE SUMMARY

The purpose of this document is to provide input on Leasehold and Major Works to assist the Communities and Local Government Select Committee in deciding whether a deeper understanding of social housing sector leasehold issues would be useful for the development of social housing policies. Oral evidence will also be provided.

Leaseholders form a significant and increasingly vociferous minority group of home owners in the social housing sector and their complaints have serious implications for home ownership policies and initiatives. It is vital to understand why leaseholders are so unhappy despite the measures taken for their benefit.

We have over twenty-five years experience of 100% home ownership through the Right to Buy initiative, and further new home ownership policies are being proposed to allow people to purchase part shares in their existing home (Social Homebuy). However, there has been no research focussed on understanding the challenges and opportunities of mixed tenure and home ownership for a generation of leaseholders, landlords and the community.

I believe that an enquiry into leasehold issues would help to drive and inform the debate over social housing sector home ownership and provide a new platform for the formulation of future Housing policy and legislation.

At this stage, any conclusions can only be exploratory, and my personal experience is limited to local authority leasehold. However, there are plenty of issues to suggest that the matter is worth researching and in December I had decided to embark on a research project entitled “The Leasehold Question”, intending to address those issues.

1. *Problems which need to be addressed*

1.1 Social housing sector leaseholders residing in estates and tower blocks are some of the poorest home owners in the country. They are inadequately represented and often poorly managed. They do not own property and they have no right to influence the works to their home and neighbourhood. They are obliged to pay for these works—as and when commissioned by the landlord.

1.2 Leases in the social housing sector are inconsistent and almost impossible for the leaseholder to fully understand. Many leases are out of date and poorly drafted and the balance of power is in the landlord’s favour.

1.3 There are many leaseholders who are currently suffering from charges which neither they nor the landlords anticipated. Some of these charges are over-inflated, and driven initiatives which are of little relevance to leaseholders. None have considered the leaseholders’ financial position. Home ownership in the social housing sector will be brought into disrepute if their immediate problems are not addressed successfully.

1.4 Mixed tenure will always present management tensions and there is a serious dearth of information at every level which presents a barrier to its effective long-term management.

1.5 Landlord communication with leaseholders is generally poor, exacerbated by the lack of standard model: differing leases; many landlord variations; and wide-ranging motives for home ownership.

2. *Thesis: The current legislative framework for social housing sector leasehold management actively encourages conflict and injustice:*

2.1 Legislative provision has been made against leaseholders becoming too powerful, which is a perfectly understandable concern. However, the effect is that leaseholders have very few rights (which are almost impossible to exercise) and the landlord has few obligations (which are difficult to enforce).

2.2 Through the lease, landlords are given unilateral rights to commission, control and charge for works to the leaseholder’s home and neighbourhood.

2.3 The legislative framework gives leaseholders the right to “consultation” and to challenge charges not “reasonably incurred”; but falls short of giving the leaseholder any absolute right to influence the course of events at any stage of the planning process.

2.4 Section 20 (S20) “consultation” is conducted towards the end of the landlord’s planning process, when contractors are lined up and deadlines have been set. The first notification to the leaseholder of works plans and prospective charges is through this mechanism.

2.5 Clearly, the landlord will be resistant to change at this stage, even if a change could be justified and leaseholders had the power to enforce it. In practice it is already too late to challenge effectively, and under S20, the landlord has no obligation to change its plans.

2.6 Most challenges fail and leaseholders give up and become resentful. It is hardly surprising that the relationship is adversarial.

2.7 Leasehold Valuation Tribunal (LVT) is often the final act of desperation of the most determined. The landlord’s obligations to the leaseholder are then viewed in the context of wider obligations in the social housing sector, where the leaseholder is a minority interest. Landlords usually win.

2.8 *Recommendations in this paper are primarily focussed on achieving a collaborative framework in which all parties are appropriately empowered*

3. *Leaseholders offer an opportunity for unique insight:*

3.1 **Vested interest in value for money**

As 100% home owners, leaseholders are invoiced directly by social landlords for the whole cost incurred in servicing, maintaining and improving social housing sector housing. This gives them a vested interest in achieving value for money on works for which they pay service charges. This vested interest could be harnessed for the common good.

3.2 **Leaseholders could act as a model for other home ownership schemes**

In view of the drive from Central Government for home ownership by degrees, leaseholders are an important representative voice and potentially a useful benchmark for ensuring the successful implementation of the new and more complex homeownership schemes.

3.3 Leaseholders exemplify fledging home ownership in the community

The behaviour of leaseholders (and all home owners) in the social housing sector and their actions after purchase directly affect the social housing community. Ex-tenant leaseholders who stay in the community will have a very different effect from those who arrive from the open market (often first time buyers). These are different again from leaseholders who are non-resident. A better understanding of these groups would assist the communities debate.

3.4 Leaseholders embody the tensions in private and social housing sector legislation

Leaseholders are also private home owners because they can buy sell on the open market. Non-resident leaseholders can also become private landlords, with the opportunity to lease back to Council for its tenants. By analysing the issues for leaseholders, it should be possible to derive principles for alignment between the two sectors.

WHY ARE LEASEHOLDERS UNHAPPY?

4. Leaseholders feel impotent

4.1 It is frankly scandalous that with Government approval, some of the poorest people in England and Wales have been encouraged to sign a contract with so few rights and so many financial obligations.

4.2 Social housing sector leasehold is more like a very expensive tenancy than home ownership:

- Leaseholders have no ownership rights—only right to occupy for a limited period.
- Leaseholders have no right to influence:
 - the landlord’s plans (at any stage)
 - work done to the property and neighbourhood
 - proposed improvements
 - timing and scope of works
 - quality
 - charges
- Leaseholders have no choice:
 - Leaseholders pay for all works commissioned and controlled by the landlord
 - The opportunity to challenge the landlord’s plans comes too late in the process
 - Leasehold Valuation Tribunal is the only way to guarantee a hearing

4.3 Other types of social housing sector home-owner are even worse off. Rent to Mortgage home-owners own half of the right to occupy the property but pay the full cost of works and services, and they can have no support even from leaseholder associations, because they are not leaseholders. Shared owners and social homebuy tenants (who may only own 25% of their home) are in a similar position.

5. “Caveat Emptor”

5.1 If leaseholders had understood that the landlord would have unilateral rights over works and charges on their homes, they probably would not have signed the contract.

5.2 The rule of “caveat emptor” is wholly unjustified for most prospective leaseholders who have little opportunity to understand the full implications of a decision to purchase.

5.3 Prospective buyers would be able to judge the value of flats and maisonettes more correctly if service charges were disclosed as an average over a relevant period.

5.4 Landlords are not obliged to reveal (to prospective buyers on the open market) what they know about works plans or the condition of property, partly because they are not completely in control of funding.

5.5 Social housing sector leases are complex long-term contracts, and conveyancers, more familiar with straightforward transfer of freehold property, often skimp on leasehold advice in order to keep costs down for purchasers who have low disposable income.

5.6 Similarly, to save money, surveys are minimised, partly because buyers assume that the landlord has fulfilled its obligations to keep the property in good repair.

5.7 *Landlords should be compelled to yield up information about the condition of the property and plans for major works to all prospective leaseholders—Section 30*

5.8 *Major maintenance works should be disclosed at the point of sale as an average over a relevant period—Section 28*

5.9 *Prospective leaseholders should have access to a wide spectrum of advice—Section 26*

6. *Lack of leasehold advice and support*

6.1 If home ownership is to be viable as a first step to responsibility in the social housing sector, it is vitally important that leaseholders are adequately supported.

6.2 Whilst the government has recognised some responsibility to support prospective Right to Buy leaseholders, they are abandoned once the lease is signed. Such advice as they receive would seem to be inadequate, as is evidenced by the current outcry from leaseholder associations across the country.

6.3 A social housing sector lease is such a complex contract, that it is unreasonable to imagine that any lay person should be expected to manage without a source of local specialist leasehold advice:

6.3.1 **Legal:** LEASE can provide post-purchase legal information on a particular lease and general leasehold advice, but no support is available for casework. LEASE cannot provide national impartial advice to any prospective leaseholders.

6.3.2 **Technical:** Where leaseholders want to question service charges, there is often a need to speak to an independent surveyor. This is expensive and no funding is available for casework.

6.3.3 **Financial:** Citizens Advice can provide general debt and money management advice, but would not undertake casework for leaseholders without funding.

6.3.4 **Service charges:** I believe it is possible to provide clearer advice to prospective and existing leaseholders so that they can budget for work effectively. However the advice needs to be relevant to individual local circumstances if it is to be of any value.

6.3.5 **Effective representation to the landlord:** Service charge payers must have more control over the work for which they pay and they need effective representation to the landlord to ensure that their interests are understood and considered.

6.3.6 **Participation:** Participation Officers have been instrumental in setting up leaseholder associations in local authorities, and in helping leaseholders to understand how to get the best out of the landlord. However, these officers are understandably more focussed on neighbourhood issues and associations are few, staffed by volunteers. There is a need for a funded source of independent advice on leaseholder-specific issues with the landlord.

6.4 Leaseholders are not a “community” and as individuals they are difficult to engage. This level of advice is therefore unlikely to become available without government encouragement. However, if the support is not provided, government will continue to have opposition from the vociferous minority who are prepared to declare the injustice loudly.

6.5 Advocate(s) for a locality could be appointed through an agency such as Citizens Advice under the guidance and control of LEASE. These advocates could then be supporting more than one landlord and have a wider range of knowledge and experience.

6.6 *Leaseholders should have access to an independent local advocate—Section 26*

QUESTION ONE

Difficulties experienced by leaseholders in connection with major works initiated under the Decent Homes and other government programmes

7. Almost all the difficulties experienced by leaseholders in connection with major works stem from their exclusion from the planning process at every stage. Leaseholders need to be given at least a measure of control over the way their money is spent.

7.1 Research into service charge experience is minimal and attempts to quantify the problems beyond London have yielded poor response. However, there is plenty of evidence that at least some leaseholders in London and Manchester are being presented with bills as high as £30–40,000 in one year. The larger areas we hear about have grouped together to form leaseholder associations.

8. Current and Historical Problems with large scale service charges

8.1 Leaseholders’ issues are giving home ownership in the social housing sector a bad reputation and it is clear that measures must be taken to avoid the problem recurring.

8.2 Suggestions for impact assessment could be used as a compensatory measure—Section 25

9. Boom-Bust approach to maintenance

9.1 Tower blocks and estates with properties of poor construction are the most expensive to maintain. Residents in these properties are on the lowest incomes.

9.2 There is a “boom-bust” approach to maintenance in the social housing sector, because major works are expensive and landlords depend on funding from central government. If funding is not available, then property is often neglected for long periods. As buildings deteriorate, maintenance bills become higher and the burden on leaseholders increases.

9.3 The current Decent Homes programme is the best recent example where leasehold bills are rocketing, particularly for tower blocks. This pattern can be expected to continue unless maintenance can be managed more effectively.

9.4 Central government should compel and support social housing sector landlords to undertake rolling maintenance programmes—Section 28.

10. Economies of scale for major works

10.1 Economies of scale seem to be inverted in the social housing sector and charges are usually significantly higher than in the private sector. This can be explained in many ways, but it would be interesting to test the principle that high quality long term works are cheaper in the long run. Social housing sector home owners have a direct vested interest in obtaining value for money and this attribute could be harnessed to other measures of spending control.

10.2 Leaseholders should be protected from being charged a premium for works because they are in the social housing sector—Section 25.

10.3 One of the responsibilities of any local service charge advocate should be conduct leaseholder impact analysis at local level—Section 26.

10.4 It would be interesting to test the principle that higher quality long term works are cheaper in the long run—Section 33.

QUESTION TWO

The role of central and local government in commissioning works, ensuring value for money and determining the level of costs to be carried by leaseholders

The role of central government

11. Observations on the resources available to central government

- **Lease contract:** No standard model exists in the social housing sector
- **Legislation:** Landlord and Tenant, Housing, Local Government: inadequate provision for the protection of leaseholders and home owners in the social housing sector
- **The Audit Commission:** KLOE no 12 is still very new and needs to be done
- **Communities and Local Government:** Leasehold issues are spread across departments which do not interact (eg Landlord and Tenant issues are managed entirely separately from Housing Revenue Account)
- **LEASE:** narrow definition of responsibility
- **NROSH:** not a top priority although the information is potentially crucial in developing community strategies

12. The ring-fenced Housing Revenue Account has been most effective in starting the process of getting landlords focussed on home ownership and the standardisation of housing software will provide one of the means by which best practice can be developed.

12.1 Lack of leaseholder influence over works

There is no provision for leaseholders to have any influence at all over the work done to their home. This is unacceptable and urgent action is needed to correct this very serious injustice.

12.2 Central government should add new levels of control in the form of a service charge impact analysis for national and local Housing initiatives—Section 25

12.3 It is possible for a single leaseholder to be charged thousands of pounds for damage caused by antisocial behaviour in the neighbourhood
There are still inconsistencies which could be removed through implementing government guidelines for which provision has been made. In particular, there are items of “public works” which should reasonably

be paid from the public purse, but which are currently levied from service charge payers. An example of this is that leaseholders can be charged for cleaning and repairs caused by antisocial behaviour in the neighbourhood, for which no insurance is available.

12.4 Central government should implement a set of guidelines for the allocation of works to the HRA. This provision already exists—Section 29

13. *The Lease is a poorly drafted contract and there is no single model*

13.1 It follows that no central measure can have a consistent effect if it acts on a non-standard contract. Moreover, the burden on landlords to understand the variations in every lease must be very expensive and unreliable.

13.2 It is likely that leasehold became the contract of choice for the social housing sector in the absence of any alternative for flats and maisonettes. It may also be that government wanted the option to regain the asset at the end of the term.

13.3 A contract for tenure involving such high costs of maintenance might be easier to justify if transfer of the asset itself had taken place, especially since lease terminations will become an administrative headache eventually. Commonhold as the tenure of choice for the social housing sector should be considered as an option.

13.4 In the light of twenty-five years' experience, recent developments and future plans over home ownership, it would be useful to review all aspects of a lease as the contract of choice for the social housing sector—Section 27.

14. *The impact of government policies and initiatives on leaseholders*

14.1 At times, social housing sector landlords are obliged to implement government policies and initiatives on existing stock for reasons other than straightforward asset management. The Decent Homes programme was explicitly directed towards repairing years of neglect, which was directly the result of landlord failure under the lease to keep property in good repair.

14.2 We are regularly reminded that leaseholders must not be subsidised by tenants, but yet the leaseholder is obliged to pay the full cost of these works irrespective of any benefit derived.

14.3 In the private sector there is less opportunity for government funding to undertake such works and landlords have more control and time to plan.

14.4 Leaseholders should be protected against paying a premium for policies which are irrelevant or detrimental to them—Section 25.

15. *Landlord and Tenant legislation contains unresolved tensions*

15.1 Social housing sector leaseholders purchase on the open market in the private sector but suffer considerable disadvantage by lack of control and higher charges through being managed in the social housing sector. There has been some disagreement in SSWP discussions over whether the two sectors should be aligned.

15.2 The alignment between the private and social housing sectors should be reviewed to establish the principles by which legislation should be interpreted—Section 27.

15.3 There seem to be considerable tensions for landlords in managing tenants and home owners, especially in customer service. It is unclear to me why this should be, but staff seem to find it difficult to understand the perspective of a home owner and it is likely to be that there is a lack of training.

15.4 The tensions between tenant and home ownership management need to be more thoroughly understood and appropriate action taken to alleviate the problems—Section 30.

16. Cost vs Value of Works

16.1 Central and local government assume that the cost of works will directly translate to increased value of the property. This is a gross over-simplification:

- Property prices are driven by location and overall impression rather than stock condition
- Prices of flats are also driven by service charges, which are not transparent
- Property prices are artificially limited by stamp duty thresholds
- In a stagnant market, works may not affect property prices at all
- The relationship between capital works and property price is complex

16.2 Capital works should be reviewed to take account of the way in which value is realised for the leaseholder and adjusted accordingly—Section 25

16.3 *Service charges including capital works should be disclosed at the point of sale and charged as an average over a relevant period—Section 30.*

17. *An understanding of leaseholders will help to drive and inform the housing debate*

17.1 If policies are to be formed for the social housing sector, then it would seem unreasonable to make any assumptions about leaseholders without more information. At present little is known about leaseholders and the impact they have on the local community.

17.2 Mixed tenure is difficult to manage at least partly because growth of home ownership is organic and no longer under the control of the managers.

17.3 Leaseholders have a foot in many camps and understanding their behaviour, needs and issues could provide useful input to the development of social policies. For example what are the implications of increasing numbers of non-resident leaseholders?

17.4 It would be useful to understand leaseholders better—Section 32.

18. *National Register of Social Housing (NROSH) is now operational but not high priority*

18.1 As the most prevalent form of social housing sector home ownership leasehold assignments must now be numbered in millions. It is a symptom of the lack of focus on leaseholders that no statistics are readily available for the number of social housing sector leaseholders

18.2 NROSH was launched in 2006 and now provides the means by which data can be collected automatically from the housing management systems of local authorities and housing associations. Automation means that the burden on landlords is minimal. This is currently being rolled out on the basis that participation by landlords is voluntary and as a result only a quarter of the social housing stock has been captured to date. NROSH already has the ability to collect information on the tenure of properties, including whether they are leasehold, but this information is often not provided by landlords.

18.3 LEASE was not involved in this project, but should be included in any review.

18.4 A directive given to social housing sector landlords in March 2007 could require delivery of tenure statistics by April 2008—Section 32.

The role of social housing sector landlord

19. *“Recognition” of Leaseholder Groups is almost meaningless*

19.1 Leaseholders are a disparate set of individuals and hardly form a “community” in the conventional sense, and this is why so few groups exist. Things have to be very bad for them to take such action.

19.2 Energetic unpaid leaseholders can volunteer to form a Tenant Management organisation or Leaseholders’ Association, and they will be “recognised” by the landlord if they are correctly formed.

19.3 However, “recognition” is not legally enforceable.

19.4 Even if the group is “recognised” it is difficult to be truly representative when access to its members is controlled by the landlord (due to perceived Data protection Act limitations).

19.5 Although leaseholder groups should be encouraged, there are many pockets of individuals and voluntary leaseholder organisations are unable to reach everyone.

19.6 Leaseholders should be properly represented by a recognised independent advocate supported by government and funded primarily from service charge—Section 26.

20. *Social sector housing stock has a history of neglect*

20.1 Under the lease, landlords are obliged to keep properties in good repair:

- Leaseholders, before and after purchase, presume that the landlord will be expected to fulfil this obligation.
- The lease often provides for a higher standard of maintenance than landlords have been accustomed to provide for tenants.

20.2 The Decent Homes programme was specifically designed to address the years of neglect undergone by social housing sector stock, and leaseholders are expected to pay for the privilege.

- Homes had been sold under the RTB scheme prior to this programme, and these works were not taken into account

- Leaseholders have bought homes in a poor state of repair at market prices trusting that landlords have met their obligations

20.3 Landlords should be obliged to maintain their Housing stock on a rolling basis—Section 28

20.4 Leaseholders should not be expected to pay a premium for landlord neglect—Section 25

21. *Service management quality is a major issue.*

21.1 There seems to be a lack of clarity and standards in the management of leasehold and services: service management standards and procedures are not always transparent to leaseholders. Repairs and maintenance services seem particularly prone to confusion.

21.2 Leaseholders are expected to pay for block repairs (up to a given threshold) which were not initiated by them and which were never reported to them. It is often normal practice for landlords to present a bill as standard, with no detail about charges for block repairs.

21.3 Employees handling leaseholders in the social housing sector do not generally undergo formal training on the subject, so there is no standard practice and therefore no assurance that Housing staff know how to handle leaseholders.

21.4 In the private sector, RICS and ARHM have a code of management practice. Something similar should be adapted for the social housing sector.

21.5 Social housing sector landlords should be accountable under a management code of practice—Section 30.

QUESTION THREE

The effectiveness of measures available or proposed to reduce the burden upon leaseholders

22. *Section 20 “consultation”, in its current form (and if applied at all) gives leaseholders inadequate consultation rights, although it is an improvement over earlier legislation.*

22.1 Under Section 151 of the Commonhold and Leasehold Reform Act 2002, Major Works usually require landlords to “consult” leaseholders on reaching a specified annual service charge threshold. This is called “Section 20 Consultation”.

22.2 Government procurement procedures conflict with the landlord’s obligations under Section 20, and they must seek dispensation from Section 20 through Leasehold Valuation Tribunal.

22.3 Section 20 needs to be aligned with Government procurement guidelines—Section 24

22.4 Section 20 “consultation” obliges landlords to seek observations from relevant leaseholders, but does not oblige them to change plans even if it is appropriate. In practice, at this stage plans are complete, contractors are lined up and consultation is the last box to be ticked.

22.5 Furthermore, the threshold for “consultation” is flawed and potentially landlords have unilateral freedom to undertake works which could be poorly scoped, of poor value and charged over many years.

22.6 Section 20 should be recognised as the final part of a collaborative process in which leaseholder impact assessments have been conducted; and should include some right for individual leaseholders influence proposed works—Section 24.

23. *Leasehold Valuation Tribunals should be a measure of last resort, not the only way in which a leaseholder can guarantee the landlord’s full attention.*

23.1 In practice LVT is a thoroughly intimidating exercise which costs money to initiate and legal support is vital, as anyone knows who has been a litigant in person. Very often, the challenge is on technical grounds, and so a surveyor will need to be paid for an expert opinion. The process is time-consuming and leaseholders are not experts in the field.

23.2 Leaseholders have no access to case support (LEASE provides general legal advice). Citizens Advice and Shelter might provide limited advice, but their role does not extend to casework for leaseholders. Social housing sector leasehold is a narrow field of expertise and specialists are few and far between.

23.3 At LVT the terms of the lease must be enforced, but they are interpreted in the context of legislation for the wider obligations of the landlord. The obligations enforced by legislation do not include collaboration with leaseholders.

23.4 Leaseholders who are successful at LVT will often be in groups and the challenge will involve significant sums of money. Most leaseholders would not run the risk of being wrong, or could not handle the emotional and intellectual demands of the process.

23.5 It would be far more effective and fairer to consider leaseholder impacts from the outset and to encourage collaboration throughout the process of works planning and implementation.

23.6 Leasehold Valuation Tribunals should become the tool of last resort, to be brought into use only when the collaborative process of consultation has broken down—Section 24.

RECOMMENDATIONS

24. *Social housing sector legislation for “consultation” should be reviewed and extended: See Sections 22 & 23*

- Through collaboration, to secure Leasehold Valuation Tribunal as a tool of last resort
- To provide balanced empowerment through local and central advocates for home owners and service charge payers to influence projects and initiatives from the outset
- Individual service charge payers should also have power to change plans under strict guidelines
- To take account of Government procurement guidelines
- To incorporate changes into the appropriate Audit Commission KLOE
- To establish a wider role for LEASE

25. *Social housing projects/initiatives affecting the Housing Revenue Account should undergo service-charge impact assessments to include: See also Section 8*

- *Section 16*—Recognition through a new charging (or payment) structure, that cost of works does not necessarily translate directly or immediately into increased home value
- *Section 14*—Recognition through service charge reductions, that works driven by government initiatives may be of little relevance or even detrimental to the service charge payer
- *Section 10*—Recognition through proper consideration of payment and charging alternatives, that social housing sector major works can disadvantage the leaseholder and attract a premium
- *Section 20*—Service charge payers should be protected from paying a premium for landlord neglect

25.1 *Section 11*—Communities and Local Government departments need joined-up thinking to achieve this

25.2 *Section 12*—HRA measures should be the foundation for new controls, to encourage collaboration through an advocate network (see below).

25.3 *Sections 6 & 11*—LEASE should be a key member of the development team.

26. *Service charge payers should have access to an independent local advocate See Sections 5, 6, 10 & 19*

26.1 An independent local leasehold advocate service should be funded through service charges (similar to the Ombudsman service) and could be conducted through a local leaseholder association or through an organisation supporting a locality, such as Citizens Advice.

26.2 Norwich & Islington Leaseholder Associations are campaigning for a subscription service. The service is estimated to cost under £25 per year.

26.3 If the service were to be extended to welfare tenants, then this should continue to be funded by central government. Could prospective buyers pay a fee through landlord services?

26.4 LEASE should be actively involved in this process.

26.5 Suggested roles for a service charge advocate:

- To achieve successful collaboration between landlords and home owners
- To act as the landlord’s primary point of contact for all home ownership issues
 - To undertake service charge impact assessments
 - To advise and monitor standards for customer service
 - To advise and monitor standards for repairs and maintenance
- To advise prospective and post-sale home owners
- To be a member of a nationwide network coordinated through LEASE

26.6 Suggested scope of advice for prospective and post-sale home owners:

- Legal: supported by LEASE; general leasehold advice, including casework
- Technical: access to survey services at a reduced price
- Financial: provision of debt and money advice geared to service charge payers

- Service charges: individual local advice on the landlord's chargeable services, including implications of central and local government initiatives
- Participation: Liaison with landlord staff and leaseholders to encourage communication and feedback

27. *The whole concept of leases in the social housing sector should be overhauled: See Sections 13 & 15*

- What sort of home ownership contract is best for the social housing sector?
- What are the principles of home ownership and (how) can the private sector and social housing sector be aligned to remove injustices across the board?
- How can the home ownership contract be structured to ensure that central legislation is applied consistently
- Consider the introduction of model contracts for all social housing sector landlords

28. *Compulsory maintenance of social sector housing stock See Sections 9, 16, 20*

Social sector housing stock should be compulsorily maintained to a reasonable standard and service charge payers should be protected from paying a premium for neglect.

29. *Government guidelines should be introduced to define the criteria for allocating works to the Housing Revenue Account (HRA) See Section 12*

This refers to "grey areas" such as public services and works resulting from anti-social behaviour. Provision for these guidelines already exists.

30. *Social housing sector landlords should be subject to a code of practice for management similar to RICS/ ARHM and by April 2008 they should be obliged to: See Sections 5, 15 and 21*

- Fully understand their commitments under the lease
- Implement a staff training scheme
- Implement the HRA for home ownership under guidelines from central government
- Collaborate with service charge advocates for project impact analysis
- Supply Tenure information to NROSH
- To provide clear average service charge information to all prospective buyers To place all stock plans in the public domain

31. *LEASE should have wider dispensation, potentially to incorporate: See Section 11*

- o consider how advice could be extended to prospective buyers
- consider how all service charge payers might be representedo the facilitation and training of local home ownership advocates
- guardian of the code of practice for landlord management in the social housing sector?
- advise all other agencies on social housing sector home ownership issues and trends
- membership of NROSH board
- advice to Office of National Statistics (ONS) on incorporation of home ownership statistics (to the new survey to replace CLG English House Condition Survey and ONS Survey of English Housing planned for 2008)

32. *Prioritise delivery of National Register of Social Housing (NROSH) Tenure statistics: See Sections 17 & 18*

- By April 2008 all landlords should be obliged to supply Tenure information to NROSH on all their stock
- NROSH Tenure information should be reviewed and enhanced to provide better support for housing policy development and to enable benchmarking for landlord best practice
- LEASE should be represented on the NROSH board

33. *Investigation the causes of high service charges for major works in the social sector Section 10*

This could include the evaluation of the principle and its application that higher quality works lead to lower overall costs.

It would also be interesting to assess whether and how the premium for OJEU works might be avoided. It is possible that large-scale works are no longer the optimum approach.

Supplementary memorandum by LEASE

Thank you for your recent letter requesting clarification of my answer to question 41 of the evidence session that Anne Main put to me. I have now been able to find references for my comments.

First, circumstances where the costs may exceed the value of the flat in the relevant premises. My comments related to works on the Chalcot Estate in the London Borough of Camden that came before the London leasehold valuation tribunal in September 2005. At paragraph 22 of the tribunal's determination (LON/00AG/LDC/2004/0038) they refer to the comments of David Padfield, the Head of Home Ownership. The tribunal state:

“22. He gave a sample service charge projection for a flat in one of the blocks (Bray) The total estimated cost per flat of the capital and lifecycle works to be carried out under the agreement was approximately £65,312 at current prices and £67,861 after allowing for inflation. In addition, the costs of other maintenance items added a further £16,608 at current prices or £25,498 with inflation. Furthermore, the PFI partner's costs attributable to leaseholders for works which were service chargeable was £12,369 at current prices or £16,534 after allowance for inflation. The projected total service charge liability for a single flat in respect of works within the agreement was approximately £94,838 at current prices, or £109,344 after allowing for inflation. This cost would, however, be significantly reduced by the operation of the cap under the 1997 and 1999 Directions. He said that, while he could not bind the Council to a future policy, it was not the Council's present intention to seek to assert that the benefit of works, as defined by the 1997 and 1999 Directions, should operate to raise the cap above £10,000 over a five year period, although it had to be remembered that the cap only applied to works within the PFI agreement”.

Turning to the window replacement issue, I have now found the relevant reference. Again, it is the London leasehold valuation tribunal (LON/00AULSL/2004/0074).* The case concerned premises in the London Borough of Greenwich but, it involved windows that had been refurbished three years previously rather than renewed. The lessees took issue with the proposed charges and the tribunal determined that:

“[The lessees'] contention was that the works in dispute were not necessary and that it was therefore unreasonable for them to contribute towards payment. They did not dispute [the London Borough of Greenwich's] entitlement to charge for improvements under the terms of the leases and did not suggest failure on the part of [Greenwich] to comply with Section 20 of the Act. The evidence which they produced from experts was broadly accepted by the [Greenwich].

[Greenwich's] principal justification for replacing the windows was their requirement to comply with the requirements of the Governments 'Decent Home Initiative' and the Building Regulations. The Tribunal accepted the statement of Mr Lee that this necessitated the installation of double glazing which was uneconomic without the installation of new UPVC windows. However they were concerned that Mr Lee had failed to produce any written evidence of the contents of the 'Decent Home Initiative' or a copy of the consultant's report referred to in his statement. They were also concerned at the admitted lack of response on the part of the [Greenwich] to legitimate questions raised by the [lessees] in the past. They took into account the fact the [lessees] had benefited from [Greenwich's] inability to recover the costs of the earlier work and that the replacement of the windows did not adversely affect the external appearance of the building.

Taking the above factors into consideration they concluded that [Greenwich] should only be entitled to 50% of the costs relating to window replacement ie to £1,322.88 for No 13 and £1,265.36 for No 15. The [lessees] should be entitled to recover the Application fee but not the other expenses claimed from [Greenwich]. As the landlords would not seek to recover costs in connection with the proceedings no order would be made under section 20C of the Act”.

I have enclosed copies of both tribunal determinations and I hope that , combined with my comments , they clarify matters for the committee.

Anthony Essien
Principal Legal Adviser

April 2007

* Not printed.

Supplementary memorandum by the Department for Communities and Local Government

The Committee has expressed an interest in this review. In particular, it held an evidence session on 5 March for stakeholders and Departmental officials.

We have today made a statement to Parliament on the outcome of the review, and I wanted to take this opportunity to inform you of our conclusions and of the actions we are taking.

As the statement said, we think that more can be done in the short term to help leaseholders to deal with high major works bills through the wide range of existing payment options. The alternative of simply extending the existing scheme for capping bills would not target those most in need and would be very expensive.

In the short term, we will make it clear to local authorities that they should inform and advise all leaseholders who face particularly high major works bills about the available payment options, offer the full range of available options, and share best practice. They should also assist leaseholders in hardship from the existing resources made available to them (for example, funding for private sector renewal) which they are already expected to target towards those in need and on low incomes.

We have increased funding for the Leasehold Advisory Service (LEASE) so that it can offer social sector leaseholders authoritative advice and help and to enable it to expand its alternative dispute resolution and mediation role.

We will also continue to work urgently with lenders, independent financial advisers and landlords to develop the use of existing equity release and equity loan schemes, including the "HouseProud" scheme run by the Home Improvement Trust.

In the longer term, we intend to legislate to enable local authorities to offer equity loans to leaseholders, and to buy back shares in properties so that leaseholders in difficulties do not have to revert to being tenants.

This is work in progress. We will continue to actively monitor developments, to maintain focus on the best ways of tackling these issues both now and in the future.

Baroness Andrews

29 March 2007

Supplementary memorandum by the London Leaseholder Network

Please accept this as a response to the request for further information sent by you to me, on behalf of Elizabeth Hunt, Joint Clerk of the Committee.

1. *QQ 5 to 9:*

On the Chalcott Estate which is in the London Borough of Camden there are 100 leaseholders among the 750 properties.

The Council is proposing to carry out substantial major works with the purpose of extending the life of the properties by 15 years, currently the Council proposes to spend an average of £154,000 per flat, some of this will be funded via a PFI agreement and will be subject to a cap, more of the works will be funded by other means and will not be subject to capping.

This information is based on statements of truth submitted by council officers to an LVT Tribunal in 2005, supplemented by further updates of meetings between the Council and leaseholders.

City West Homes in LB Westminster has confirmed to me that currently 192 leaseholders will be subject to bills of £58,000 for major works.

An officer of City West Homes represents the Association of ALMOs on the Social Sector Working Party, chaired by LEASE, he commented that this level of bills, if funded by Capital Funding would have no adverse effect on the Community Charge.

2. At Q23, Bullsmoor Way in LB Enfield was built circa 1966 using Bison large panel construction methods

In 1998 there was serious disrepair to the extent that all properties required to be decanted, the cost of the repairs were around £80,000 per property and the issues were aired by means of a Public Enquiry. in 1998.

3. *QQ29 to 31*

The most obvious example where leaseholders did not have enough equity in their properties has to be the Rowner Estate in Gosport, which has been in the public eye since 1992 and where 300 leaseholders have remained trapped in properties they could not sell, because they were red-lined and because the landlords claimed that they could not afford the costs of demolishing the estate, the preferred option. Following

protracted negotiations between the Local Authority and Government officers a plan is due to be announced next month which will allow the 300 leaseholders to be compulsory purchased. Leaseholders expect to achieve £40–£50,000 which will not clear the existing obligations of most of them nor allow any of them to purchase another property.

Broadwater Farm Estate in the LB Haringey is another of the estates which are red-lined and mortgages unobtainable by most regular means.

Mrs Wiltshire who described herself as a retired person is typical of the leaseholders on estates such as this. On receipt of major works bills for £30,000 she felt she could no longer afford to pay her obligations. She was forced to sell to a cash buyer for much less than the price of similar properties in her area. This allowed her to clear her debts but left her homeless and without the means to purchase another property.

I am also aware that there is a growing problem among first time buyers who have over-extended to buy. A number have borrowed further sums in addition to their mortgage and have failed to notify their mortgage companies. They are reluctant to publicise their problems because of this. But for this group the arrival of a major works bill is the last straw and they have no option but to default.

I am happy for any of this information to be published.

John Paterson

for the London Leaseholder Network

Memorandum submitted by the National Housing Federation

The attached memorandum has been provided by the National Housing Federation. It relates to the specific circumstances encountered by one of its members, a large housing association, in managing a housing estate in South London.

MIXED TENURE MAJOR WORKS

A good example of dealing with the challenge of a number of mixed tenure blocks happened on an estate we have.

A major works project was planned to take place and consultation took place with the leaseholders. The works were going to be expensive because they included major structural repair. They also included renewal of the windows, installation of a new door entry system that a number of residents had requested plus general building repairs.

We had a lot of complaints from a number of lessees complaining about the cost of the works. This was especially vociferous in the case of “buy to let” leaseholders.

Tenants came back to us pleased to be getting new windows and a door entry system, which they felt were needed.

Below is an example of four blocks on the estate which shows the differing action we took.

Block A was all tenanted so we carried out all the planned works and the tenants were very pleased with this.

Block B was where the residents intended to enfranchise as over 80% were leaseholders. Here on their request the only works we carried out were the important structural works.

Block C was a mixed tenure block with 50% leaseholders and 50% tenants. Here two out of the three leaseholders were “buy to let” leaseholders and they did not want any works carried out. They instigated reports to question the structural works and the need to replace the windows. We did not waver from our view of the need to carry out the structural repairs but agreed only to overhaul and not replace their windows if they did not want it. They chose the overhaul option. We replaced the windows in our tenanted flats.

Block D was a similar make up to Block C and initially agreed with the leaseholders in block C and objected to all the work. When they saw the appearance of Block A which had all the works carried out on it, they changed their mind and agreed to have the new windows installed. These leaseholders all lived in their flats.

We offered all the leaseholders the option of spreading the cost of the works over four years with a small interest charge.

Memorandum by Mr Paul Palley

I am writing to you with general observations about Leaseholders, who have Local Authority Landlords that are responsible for the maintenance and repair of individual properties and the Estates on which Leasehold property is situated. Please provide copies of this letter to your Committee members.

PUBLIC HOUSING AUTHORITIES

The obligations and role of public Housing Authorities are far more extensive than the obligations between Landlord Tenant under a private commercial contract. Major works that are beneficial to the general public are often carried out and charged to the Leaseholder. For example Estate and Block security works which are intended to assist police, save police time and to deal with anti-social behaviour have been charged to lessees. Environmental improvements that are part of large-scale plans for public regeneration are likewise charged to lessees. On large estates Local Authorities maintain public roads, spaces and gardens. The decent Homes policy is an example of Major works, which were planned and funded on the instruction of central government and where there was no real consultation with leaseholders. In fact many Local Authorities are currently applying for dispensation from the entire Section 20 consultation.

In regard to annual services, there are many items provided such as translation of documents into foreign languages and numerous questionnaires on ethnicity, equality and household details which may be considered of public benefit. Although these services could legitimately be funded by the Tax Payer as part of public Housing policy, they would not normally be considered part of normal services between Landlord and Tenant. Yet Leaseholders are required to pay for them.

EFFICIENCY

There are approximately 400 Local Authorities in England and Wales, which administer Housing stock. Although lessees are generally obliged under their leases to contribute to these administrative costs, the bulk of cost is ultimately borne by the Taxpayer. The larger central London landlords are spending £25–30 million each on administration before any actual services are provided. Nationally this will be equivalent to a cost in the order of £10 billion merely to administer public housing. There are more public sector employees working in housing administration than work for Lloyds Bank and Barclays Bank and RBS combined. Leaseholders, who take these matters to the LVT are assisting the Government and the Taxpayer in helping to reduce public waste. This fact gets scant recognition. They face an arduous task and great resistance from their Landlords, who wish to protect the jobs of Local Council employees. Your Committee could set objective standards of administrative efficiency in terms of man-hours per dwelling etc.

EFFECTIVENESS AND COST-EFFECTIVENESS

Many of the government building programmes are totally ineffective. Play grounds are renovated at great expense and instantly destroyed. Security works fail to deal effectively with anti-social behaviour. A serious policy of eviction would be considered socially unacceptable and I do not advocate such a policy. The sad truth is that many problems on estates are insoluble.

However, once a programme of public expenditure is budgeted for, expense takes place on a “Use it or Lose it” basis. Any reduction in expense would lead to a reduction in the power of the administrators who spend Tax Payers’ money. The bureaucrats in Local government who make a living from administering these things are directly threatened by any assertion that these items are not effective or not cost-effective. They have every personal motive to exaggerate the importance and benefit of what they do, whereas Leaseholders who pay the cost of these things wish to see cost-effective and worthwhile expenditure. Leaseholders need to be defended against the excessive amount of public funds currently being expended on Local Authority Housing. The burden of proof at LVT is heavily weighed against the Leaseholder and it is a huge inconvenience and expense for lessees to take these matters to the Tribunals. The Tribunals, which are low level courts, are also reluctant to meddle in political matters. It is therefore necessary for parliament and politicians to put in place a protection for leaseholders.

PROMOTING SOCIAL DIVERSITY

The government claims that it wants to promote socially diverse occupation on Estates and that it wants “middle class” homes built on Local Authority land. However, at the present time they are driving many right-to-buy owner-occupiers to the verge of forfeiture with their current expenditure policies. These people have simply tried to put aside a little bit of capital by investing in their own homes. They take pride in their estates, which are often challenging social environments. Frankly they may be described as “the salt of the earth”.

If the government wants to transform estates, it is essential to start by protecting property values from politically inspired expenditure programmes. All that is being achieved at the moment is a severe undermining of re-sale values. In these circumstances, Local Authority Estates cannot be transformed; they

will remain ghettos that are shunned by any ordinary property owner except high risk taking buy-to-let Landlords. The fact that Local Authority property generally fails to sell easily in the open market is testimony to the persistent failure of government renewal policies.

Mr Paul Palley

8 March 2007

Memorandum by the Department for Communities and Local Government

Question 1. *At QQ73 to 76 the Committee sought confirmation as to (a) the number of leaseholders in London (b) the number of bills for works costing over £10,000 in London and (c) the number of estimates prepared for works in London which indicated that the costs would be over £10,000, in the survey data from May 2006*

1. The table annexed below* sets out the total number of council leaseholders in each of 26 London Boroughs, and the total number of major works estimates and bills for £10,000 and more issued by those Boroughs during the financial years 2003–04, 2004–05, 2005–06 and 2006–07, and (in nine boroughs) planned for issue in 2007–08. The Boroughs have not distinguished between estimates and bills, but the figures indicate the number of council leaseholders who under the terms of their leases are liable to pay these amounts. Of the leaseholders in these boroughs, 5.9% have received or on current plans will receive bills of £10,000 or more.

2. This information has been provided by the Boroughs concerned, and is a snapshot of the position at the end of March 2007 (the position as reported to us in May 2006 was that 5% of leaseholders had received or would receive bills of this size). Each borough operates its own system for billing leaseholders, and the number of leaseholders liable to pay these amounts reflects the stage reached in each Borough's programme of major works.

Question 2. *At Q101 to 102, Ms Kirkham indicated that estimates had been carried out of the cost of works across the country, and that the figures and related assumptions could be made available to the Committee*

3. The Department's best estimates of work still to be carried out under Decent Homes programme and related works to blocks and estates give a conservative estimate of the cost of capping all future bills to £10,000 across England of around £75 million per year for the 4 years to 2011.

4. This estimate is based on the following assumptions:

- (a) there will be 315,000 social leaseholders in England by 2011 (a figure derived from social landlord records of sales to date, making assumptions about the proportion of these that are flats and likely future sales during the period to 2011).
- (b) the average £10,000 + bill is £20,000, so that capping would cost £10,000 per qualifying leaseholder.
- (c) proportionately more of the difficult and therefore costly works will be undertaken during this later part of the Decent Homes programme.
- (d) some 20% of leaseholders will be liable for major works charges of £10,000 or more. In our judgement, this is a reasonable assumption that balances higher future estimates derived from a small sample of authorities' programmes (see below) against the much lower proportion of such bills actually issued and planned in London.

The higher estimates referred to above derive from figures provided as part of applications by 17 local authorities for Large Scale Voluntary Transfer (LSVT) or Arms Length Management Organisation (ALMO) status (five London boroughs, one metropolitan borough, and eleven other authorities). As part of the application process, local authorities provide a detailed and costed model which outlines the type and current condition of their housing stock and what they plan to do to bring it up to Decent Homes standard; it also includes wider works to estates and blocks.

The planned work for flats in these 17 authorities suggests that 45% of their leaseholders are likely to receive bills of £10,000 or more. If this was the position across England, the cost of capping could be as high as £260 million per year to 2011. But the much smaller proportion of such bills actually issued or planned by a wider range of London boroughs (see above) does not suggest that these estimates are representative of the position across England as a whole. In fact, the highest proportion of bills of £10,000 or more actually issued and planned by any of the five London Boroughs included in the sample is 7.8% by Islington.

* Not printed.

Supplementary notes by Pauline Walton, Norwich Leaseholders' Association

I would like to add the following comments on the oral evidence taken on 5 March:

Question 55, on Mr Betts' intervention: I think this [the inclusion of mandatory home condition reports in HIPs] is a very excellent idea and an early future review should require incorporation of the Lease and details of Service Charges as an absolute minimum.

Question 61, on Anne Main's question: In Norwich works have been repeated over unreasonable time periods and charged twice for the privilege. The error occurs because planning is not at a detailed level and when the mistake is discovered it is hard work to prove and correct.

Question 67, on Mr Essien's response to Dr Pugh's question: However reasonable a landlord's officers intend to be, their obligations to balance the books and protect tenants against "subsidising" leaseholders is clear. The landlord will inevitably maximise the funds from leaseholders if it has to. Service charge payers need independent representation to ensure that overall balance is achieved.

Question 69, on Dr Pugh's question: A charge is deemed "reasonable" if the landlord can justify it according to the legal definition, which is not necessarily defined the same way by "the man in the street". For example anything included in the Housing Revenue Account is chargeable to leaseholders. Here is a scenario which occurs in Norwich. The Council does not insure buildings and estates for damage from anti-social behaviour, so if repairs are necessary, they are charged to leaseholders directly. Thus, residential leaseholders have invested in their local community by purchasing their home and living there; they experience the disadvantages of anti-social behaviour in their area—and then they pay for the damage—to the tune of thousands of pounds per year in some cases. These charges are "reasonable" under the law.

Question 72, on David Wright's question: National Register of Social Housing is already set up to collect this. It would take a year to drive the demand for new data.

Question 83, on Mr Llewellyn's response to Mr Betts' question: See my example at Q67. It seems to me that common estate charges need particular review from all aspects—for example the cost [of] anti-social behaviour is something which Council tax payers expect to fund to some extent, and areas used by the general public should not be funded solely by the Housing Revenue Account.
