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Leasehold Reform

Twelfth Report of Session 2017–19

Report, together with formal minutes relating to the report

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Housing, Communities and Local Government Committee

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Summary

The Government has acknowledged that the leasehold system is not working in consumers’ best interests and needs to be reformed. Such calls have regained prominence in recent years with the revelation that some developers had imposed onerous—predominantly, 10- and 15-year doubling—ground rent terms in the leases of newbuild flats and houses, leaving some leaseholders unable to sell their properties or re-mortgage. But these are not the only concerns. Campaigners for reform in the leasehold sector have also criticised high and opaque service charges and one-off bills, unfair permission charges, alleged mis-selling of leasehold properties by developers, imbalanced dispute mechanisms, inadequate advice services, and unreasonable costs to enfranchise or extend leases.

At the start of our inquiry, we were particularly keen to explore the growing concerns relating to houses being sold on a leasehold basis, which we believe is an inappropriate tenure for houses and should cease. However, as our inquiry progressed, it became apparent that many of these issues were also faced by leaseholders in flats, and our recommendations reflect this.

Too often, leaseholders—particularly in new-build properties—have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance of power in existing leases, legislation and public policy is too heavily weighted against leaseholders, and this must change. Our report sets out recommendations for how this might happen.

- We urge the Government to ensure that commonhold becomes the primary model of ownership of flats in England and Wales, as it is in many other countries.

While it may be the case that the most complex, mixed-use developments and some retirement properties would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with greater control for residents over service charges and major works. We are unconvinced that professional freeholders provide a significantly higher level of service than that which could be provided by leaseholders themselves.

- The Competition and Markets Authority should investigate mis-selling in the leasehold sector and make recommendations for appropriate compensation.

Developers denied that their sales teams deliberately misled leaseholders with partial sales information and false promises of purchasing their freeholds at an agreed price. But the number of near-identical stories from leaseholders reflects a serious cross-market failure of oversight of sales practices.

- The Government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property,
the length of any lease, any ground rent or permission fees, and—where appropriate—a price at which the developer is willing to sell the freehold within six months.

It is clear that many of the leaseholders we heard from were not aware of the differences between freehold and leasehold at the point of purchase, in particular the additional costs and obligations that come with a leasehold property.

- **The Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor.**

Consumers must be able to access independent and reliable legal advice when purchasing a property. Their interests cannot be served where they are coerced into using developer-recommended conveyancing solicitors, who rely on repeat business from developers.

- **Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder's ability to sell their property or obtain a mortgage.**

- **In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—or likely to become so in future due to doubling, or other, review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties.**

Ground rent bears no relation to the level of maintenance or quality of service provided to leaseholders—that is the function of the service charge. Many buildings are well managed without any ground rent being paid. It is unacceptable, therefore, that some leading developers have in the past sought to use their market dominance to exploit their customers through the imposition of terms leading to disproportionate ground rents. There is no excuse for such onerous terms, which are symptomatic of the imbalance of power in the leasehold market and are causing considerable distress to affected leaseholders.

- **We note that it would be legally possible for the Government to introduce legislation to remove onerous ground rents in existing leases.**

While it would be difficult to change the terms of existing leases, it would not be impossible. Legislation could be made compliant with human rights law. Freeholders would probably need to be compensated, but that does not necessarily need to be at full value. The Government’s proposal to reduce the premium payable to enfranchise is equally justifiable in human rights terms as calls to reduce freeholders’ contractual income streams through lower ground rents.

- **Our view is that existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism.**

While not as low as the Government’s proposed limit on ground rents for future properties, such a cap would reflect that leaseholders entered into a contract expecting to pay a modest ground rent over the course of their tenure and that freeholders have made an investment with a legitimate expectation of receiving some future revenue.
• We recommend that the Government revert to its original plan and require ground rents on newly established leases to be set at a peppercorn (i.e. zero financial value).

In most residential buildings, leaseholders receive very little in return for paying ground rent and it is unclear what value there is, for leaseholder or freeholder, in requiring a ground rent of £10. The Government may, however, need to implement an exemption for mixed-use buildings, until commonhold becomes a realistic alternative in more complex buildings.

• The Government should introduce legislation to restrict onerous permission fees in existing leases.

It is fair that freeholders should be able to pass on reasonable costs to leaseholders where these have been incurred in the necessary administration arising from a change instigated by the leaseholder. But many of the permission fees and administrative charges we have heard about are plainly excessive, exploitative and yet another example of developers and freeholders seeking to extract money from leaseholders who have very limited recourse to challenge such fees.

• The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so.

The growing practice of imposing permission fees in the deeds of new-build freehold properties and enfranchised former-leasehold properties is an unjustified intrusion upon homeowners which many campaigners have rightly referred to as ‘fleecehold’.

• The Competition and Markets Authority should indicate its view as to whether onerous leasehold terms constitute ‘unfair terms’ and would be, therefore, unenforceable.

Were the CMA to determine that onerous terms in existing leases are indeed unfair, or that they were mis-sold, the Government should take further action. Where it is determined that leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest.

• The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge.

We have been concerned by reports of leaseholders being overcharged, paying for services they are not receiving, and high commission fees for freeholders and managing agents.

High one-off bills can be greatly distressing for leaseholders. Florrie’s Law—which capped the amount local authority leaseholders would be required to pay for repairs to £10,000 (or £15,000 in London) over a five-year period—was introduced to protect
council leaseholders from high one-off bills, but it has too many exemptions. For example, it only applies where funding has been provided by central government. Further, high bills are also a concern in the private sector.

- We recommend that the Government implement a new consultation process for leaseholders affected by major works in privately-owned buildings. A threshold of £10,000 per leaseholder should be established, above which works should only proceed with the consent of a majority of leaseholders in the building.

- The Government must legislate to require that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case.

- The Government should immediately take up the Law Commission’s 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.

Leaseholders highlighted their concerns around an imbalance of power in the tribunal process. Leaseholders should not be required to run the risk of paying their freeholder’s legal costs, even if they win. Further, while the threat of forfeiture puts freeholders in a near unassailable position of strength in disputes with their leaseholders, freeholders do require an alternative, less draconian, mechanism for ensuring compliance with the lease.

- We urge the Law Commission to recommend a process that will make enfranchisement substantially cheaper.

We support the Government in its objective to make it simpler, easier, quicker and cheaper for leaseholders to enfranchise. We agree that costs are too high and the process too complex.

- The Government should introduce low-interest loans—a Help to Buy scheme for leaseholders—so that leaseholders who want to enfranchise or extend their leases, but cannot afford to or obtain the necessary finance, have the opportunity to do so.

While we look forward to the implementation of a reformed enfranchisement process, many leaseholders will struggle to afford to purchase their freeholds at any price. This is a particular concern for house lessees on estates with a mixture of tenures, or where lease terms have affected the saleability and mortgage-ability of properties.

- The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation.

The existing work being undertaken by the Law Commission is important and welcome. However, the wider legislation that governs leasehold is not fit for purpose, and a more thorough review of leasehold legislation is now required.
Introduction

1. Campaigns for reform of the leasehold sector are not new, but the issue has regained prominence in recent years with the revelation that some developers had imposed what are perceived to be onerous—particularly, 10- and 15-year doubling—ground rent terms in the leases of newbuild flats and houses, leaving many leaseholders unable to sell their properties or re-mortgage. Concerns were also raised around the growth in the numbers of leasehold houses, particularly in the North West of England. Campaigners have argued that onerous ground rents were symbolic of wider problems in the sector, including high service charges and one-off bills, unfair permission charges, alleged mis-selling of leasehold properties by developers, imbalanced dispute mechanisms, inadequate advice services, and unreasonable costs to enfranchise or extend leases. At the very start of our inquiry into Leasehold Reform, we invited 50 leaseholders to meet us in Parliament, to talk about the issues in the sector they were most concerned about and recommend what we should pursue in our public evidence sessions. We listened carefully to their concerns and, at the end of the session, we asked what they wanted us to recommend in our final report. And they responded, with near unanimity: “abolish leasehold”. It was a clear message to us that fundamental reform of the sector was needed.

2. The Government has acknowledged that the leasehold system is not working in consumers’ best interests and needs to be reformed. Following the publication of the Government’s response to its consultation, Tackling unfair practices in the leasehold market, in December 2017, the former Secretary of State for Housing, Communities and Local Government, Rt Hon. Savid Javid MP, condemned the “practically feudal practices” in the sector and promised to crack down on them. In October 2018, the Government launched a further consultation proposing to cap ground rents on new-build leasehold properties at £10 per year, require the majority of new-build houses be sold as freehold, and make it easier for tenants’ associations to be formally recognised by freeholders.

3. The Government has also asked the Law Commission to look at leasehold legislation as part of its Thirteenth Programme of Law Reform. Since September 2018, the Law Commission has published consultations into three ‘workstreams’: leasehold enfranchisement, right to manage, and commonhold reform, and has said that it might also undertake a project examining the way in which unfair terms law applies to long leases, although no commencement date has yet been set.

4. Our inquiry did not seek to replicate the Law Commission’s important programme of work, but instead to build on that and find out whether the Government’s proposed reforms went far enough. We were particularly keen to explore the growing concerns

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1 See Annex: Summary of discussions at an informal roundtable event with leaseholders
2 Ministry of Housing, Communities and Local Government (LHR0548), para 7
3 Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response, Department for Communities and Local Government, December 2017, and Written Ministerial Statement, HCWS384, 21 December 2017
4 Strictly, the cap (and the requirement, next referred to in the text, to sell houses freehold) applies to newly-created residential long leases. In practice, these will usually be new-build, though there may be instances where new long leases are granted over existing homes. For simplicity, we shall refer to these newly-created leases as “new-build”.
5 Communities Secretary signals end to unfair leasehold practices, press notice, Ministry of Housing, Communities and Local Government, 14 October 2018
6 Residential leasehold and commonhold, Law Commission
7 Law Commission (LHR0672), para 1.2
relating to houses being sold on a leasehold basis, most notably in relation to ground rents, permission fees, estate management charges and enfranchisement. However, as our inquiry progressed, it became apparent that many of these issues were also faced by leaseholders in flats, and our recommendations reflect this. As we conclude later in this report, we do not believe that leasehold is an appropriate tenure for houses. In our call for written evidence, we asked for views on the adequacy of the Government’s programme of work on residential leasehold reform, and its application to existing leaseholders in both houses and flats. We wanted to know what further support should be provided to existing leaseholders, especially those with more onerous lease terms, and what the implications were of providing such support.

5. This Committee has never undertaken an inquiry that has had such an overwhelming response from individual members of the public. We received over 700 written submissions, the vast majority of which were from leaseholders who wanted to tell us about their personal experiences of living in a leasehold property. We took public evidence from a range of stakeholders, including leaseholder representatives, Members of Parliament, developers, freeholders, managing agents, the social housing sector, the Leasehold Advisory Service, solicitors’ representatives, legal experts, the Law Commission and the Government.

6. Our report has five chapters. The first considers whether leasehold tenure has a long-term future alongside the principal alternative model of ownership, commonhold. In particular, it considers arguments made by freeholders that they provide a unique and valuable service that would be lost through the commonhold model. The second chapter explores the suggestion by some leaseholders that their homes were ‘mis-sold’ to them, noting failures to highlight onerous terms in leases, promises that leases could be purchased at a specific price at a later date which proved to be false, and that some leasehold homes were sold as being described as ‘basically freehold’. Our third chapter looks at the issue of onerous charges in leases, including high and escalating ground rents and permission fees. We address the Government’s proposals for new-build properties and propose further action for existing leases. In the fourth chapter, we consider the evidence we received concerning service charges and one-off bills, and the adequacy of the mechanisms leaseholders have to dispute those charges. The final chapter explores the Law Commission’s work concerning enfranchisement and makes further recommendations, including with regard to support for lower-income leaseholders who may not be able to afford to enfranchise or extend their leases.

7. We wish to express our sincere thanks to those who attended our leaseholder roundtable meeting in Parliament, and to everyone who made written submissions. These were an invaluable source of information, which guided the questions we asked witnesses in public evidence sessions and helped us to agree our conclusions and recommendations. We have referred extensively to these submissions throughout our report. We are also grateful to those who provided oral evidence, and to our Specialist Adviser, Professor Christine Whitehead.
1 Future of leasehold tenure

8. We received hundreds of written submissions from leaseholders who wanted to tell us about their personal experiences of living in a leasehold property. They told us about what are perceived to be onerous ground rent terms, high service charges and one-off bills, unfair permission charges, alleged mis-selling of leasehold properties by developers, imbalanced dispute mechanisms, inadequate advice services, and unreasonable costs to enfranchise or extend leases. But it was important for us to consider whether the submissions we received represented the views of the majority of leaseholders, or if they reflected a minority of views in an otherwise functioning market.

9. Our first chapter seeks to address this question. We reflect on whether freeholders provide, as they claim, a unique and valuable service, or if leaseholders might be better placed to manage their buildings alone. We look at evidence on the extent of dissatisfaction with the leasehold model. Finally, we consider the reasons why there has been a low take-up of the principal alternative model of flat ownership, commonhold, since its creation in 2004 and how these barriers might be overcome.

The leasehold model

10. Estimates of the numbers of leasehold properties vary. Government statistics suggest there were 4.2 million leasehold properties in England in 2015–16, of which two-thirds (2.9 million) were flats, while Leasehold Knowledge Partnership reported that there were 6.7 million leasehold properties in England and Wales. When a leasehold flat or house is first sold, a lease is granted for a fixed period of time, typically between 99 and 125 years, but sometimes up to 999 years. The value of a leasehold home reduces over time, as the remaining term reduces—it is often, therefore, referred to as a ‘wasting asset’. A leaseholder, in effect, purchases the right to live in their property for an agreed period, although statute gives tenants the right to extend their lease term or buy the freehold. Owners of leasehold properties are in a landlord and tenant relationship with their freeholder. Leases usually impose obligations on the leaseholder, such as the payment of a ground rent, and the freeholder. Other obligations may relate to repairs, so that freeholder and leaseholders know who is responsible for what, or so that neighbours can ensure rights of support or maintenance are enforced.

11. Many leaseholders reported that they were surprised to learn that they did not own the properties they had purchased in the same way as they might have owned a freehold property. One leaseholder, Jo Darbyshire of the National Leasehold Campaign, told us there was “a fundamental lack of understanding about what leasehold tenure means to consumers out there.” Shula Rich, from the Federation of Private Residents’ Associations, described leasehold as “the fag end of a timeshare… it is not owning anything” and called

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8 Communities Secretary signals end to unfair leasehold practices, press notice, Ministry of Housing, Communities and Local Government, 14 October 2018, and Q3–4 (Martin Boyd, Leasehold Knowledge Partnership) - LKP told us that the discrepancy arises from the inclusion of Welsh properties and flats in the social housing sector in their figures.

9 Leaseholders of certain properties, such as those on National Trust land, do not have such automatic rights. This issue will be explored further in Chapter Five.

10 Further background information can be found in: Leasehold and Commonhold Reform, House of Commons Library, 14 December 2018

11 Q59 (Jo Darbyshire, National Leasehold Campaign)
for greater clarity from the Government and industry that purchasing a leasehold should not be sold as the ‘ownership’ of a property in the same way as freehold. This was echoed by the National Leasehold Campaign, who told us:

[ … ] to avoid confusion, it would assist consumers to change the language we use when we refer to leasehold properties. We are not home owners, nor did we get Help to Buy anything other than the right to live in a building for the term of the lease. The Advertising Standards Authority should enforce this on advertising and marketing of properties.

12. There are clearly very significant differences between the freehold and leasehold tenures, but these are not always apparent to prospective leaseholders at the point of sale. As we will come on to recommend, this should be made much clearer to prospective purchasers from the start of the sales process. Our view is that it would be more appropriate to refer to this tenure as ‘lease-rental’. The Government and others may wish to use this terminology in future publications and policy statements.

Role of freeholders

13. Do freeholders provide a unique and valuable service, such that the financial cost to leaseholders—through ground rent, permission fees and enfranchisement costs—is justified? This question is key, not just in the context of proposals to move to alternative models of flat ownership, but also when considering policies that are likely to influence the incentives for freeholders to participate in the market, such as for a mandatory peppercorn ground rent or lower enfranchisement costs.

14. Reflecting much of the evidence from freeholders, City and Country Group told us that “the role of the professional freeholder cannot be underestimated”. Freeholders emphasised the long-term interest they have in their investments. Many contrasted the average tenure of flat lessees, who retain their properties for an average of between three and five years, with professional freeholders, who typically hold their investments for more than 50 years. The Home Builders Federation said the freeholder was the “custodian of the building or estate” and provided “a very long-term view on the decisions affecting the building and grounds”. Long Harbour outlined how this long-term presence was to the benefit of leaseholders:

A responsible freeholder plays a valuable role in protecting consumers by ensuring properties are maintained in the long-term interest of residents, managed in a professional and efficient manner and resolving not only critical issues such as fire safety but also ensuring peace and harmony within a residential dwelling block. This advantage [ … ] comes from the involvement of a freeholder responsible for the long-term interests of the development [ … ] In particular we have seen in the past decade, large

12 Q77, Q80 (Shula Rich Federation of Private Residents’ Associations)
13 National Leasehold Campaign (LHR0534), para 44
14 City and Country Group (LHR0493), para 10
15 Ground Rents Income Fund (LHR0598)
16 Home Builders Federation (LHR0475)
and well-regulated institutions come into the sector, which has driven up standards: they have held managing agents to account and rooted out bad practices.\textsuperscript{17}

15. Mick Platt, representing the Wallace Partnership Group, told us that freeholders were the “ultimate safety net for leaseholders when things go wrong”.\textsuperscript{18} The removal and replacement of unsafe cladding from high-rise residential buildings was cited by Long Harbour “as an example of the role that freeholders play”, noting one example in Liverpool where the freeholder provided “emergency interest free loans to fund critical emergency measures, such as the presence of fire marshals on site 24/7, as well as works to remove and replace the unsafe cladding”.\textsuperscript{19}

16. However, fire safety was often noted as an area in which the leasehold system was not working as anticipated.\textsuperscript{20} Despite pressure from the Government, many freeholders have been reluctant to pay for the removal and replacement of the combustible cladding that many were ultimately responsible for commissioning.\textsuperscript{21} For example, Consensus Business Group told us they believed it was “reasonable that leaseholders rather than the freeholder should pay for the remediation works” and that the price paid for freeholds was on the understanding that the costs of remedial work were borne by leaseholders.\textsuperscript{22} This is in contrast to the Government’s position, which Heather Wheeler MP, Minister for Housing and Homelessness, articulated as, “No, freeholder. That is up to you, and it is up to your insurers behind you”.\textsuperscript{23}

17. The freeholders and developers we spoke to all supported the Government’s proposal to introduce a ban on “the unjustified use of leasehold on new houses” but argued that freeholders played a valuable role in the functioning of apartment blocks and mixed-use developments.\textsuperscript{24} In many buildings, freeholders are solely responsible for the selection of, and ongoing relationship with, the managing agent. By contrast, the commonhold model of ownership requires the residents to take over the stewardship of the block. The Minister for Housing and Homelessness told us that this was one of the key benefits of having a freeholder—someone who could manage this relationship on behalf of residents:

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\text{[ … ] there will be some people in blocks of flats who really just want to go home at 6 o’clock or 6.30, shut the door and have nothing to do with the running of it. They just want to pay a managing agent, have a freeholder and not have those concerns at all.}\textsuperscript{25}
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18. Others noted that ground rent and other charges are paid to freeholders regardless of the level of maintenance to the building or oversight they provide and argued that
there was very little financial incentive for freeholders to promote the long-term interest of a building at all. Martin Boyd, from Leasehold Knowledge Partnership, told us that freeholders had “no genuine interest in maintaining the quality of the building”:

If it is a 999-year lease, they are not going to get it back for a very long time. It matters not to them whether it is in good condition or bad condition. It does to the people who live in and own the properties … When we had a third-party freeholder, he got no benefit from the building being in good or bad condition. His only benefit was from making a profit [ … ]

19. We are unconvinced that professional freeholders provide a significantly higher level of service than that which could be provided by leaseholders themselves, although we recognise that there are complexities in larger, especially mixed-use developments. The high premiums leaseholders are required to pay—ground rents, permission fees and enfranchisement costs—are paid regardless of the level of oversight the freeholder provides, and do not provide an obvious financial incentive for freeholders to work in the interests of leaseholders or promote the long-term condition of a building.

Dissatisfaction with the leasehold tenure

20. Developers and freeholders argued that dissatisfied leaseholders are not representative of the wider leasehold sector. The British Property Federation warned us that too great a focus on a minority of disaffected leaseholders risked “allowing leases to become demonised, without due regard being given to those who don’t have onerous leases”, leaving people feeling trapped in their homes, “which is simply not the case”. The Home Builders Federation insisted that leasehold “works very well for the vast majority” of the country’s leaseholders, and that most leases included fair and reasonable terms. Long Harbour told us that they had received complaints from just 0.07% of their leaseholders in the past year, with the vast majority of their leaseholders having a “tacit understanding that the relationship between leaseholder and freeholder is a positive one”. This was a view supported by the Minister for Housing and Homelessness, who told us, in the context of onerous ground rent terms, that it was important to put the problem in perspective:

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

21. Developers, freeholders and lenders told us that leasehold was a proven tenure that worked well. Jason Honeyman, Chief Executive of Bellway, said he “did not think there is anything wrong with leasehold tenure, particularly for apartment blocks”. Mick Platt, from the Wallace Partnership Group, told us that “the leasehold system works very well for the vast majority of leaseholders”. Matthew Jupp, representing UK Finance,
explained that the view of lenders was that, while there were additional risks associated with leasehold properties when compared to freehold, “the leasehold market, as a whole, works fairly well”.33

22. But others painted a less optimistic picture. A 2016 online survey of over 1,200 leaseholders conducted by the Leasehold Advisory Service (LEASE) found that 57% of leaseholders who responded said they regretted buying a leasehold property.34 Barry Gardiner MP and Jim Fitzpatrick MP, who provided evidence to our inquiry about the challenges in their constituencies, told us that their experience suggested that the figure could be even higher.35 Indeed, NAEA Propertmark published a report in September 2018 which claimed that 94% of leasehold homeowners who took part in their survey regretted buying a leasehold.36

23. We heard that the relationship between leaseholders and freeholders was, at its core, fundamentally one of conflict. Professor Nick Hopkins, the Law Commissioner for property law,37 explained that part of the difficulty with the leasehold system was that it “immediately sets up that relationship of opposition” between freeholders and leaseholders, who will often have competing interests.38 This was a view shared by Guy Fetherstonhaugh QC, who told us that leasehold provided for an “antagonistic relationship”, where “the interests of landlords and tenants will not coincide.”39 This inherent conflict was clearly represented in some of the evidence we received from individual leaseholders, with one anonymous submission angry at what they perceived to be:

[ ... ] the current, disgraceful system that is rigged against leaseholders and allows rip-off charges and exploitation of ordinary people by bullying, irresponsible developers and off-shore, tax-avoiding companies.40

24. It was noted by a number of witnesses that the leasehold model was not used in most other countries. For example, Professor Hopkins highlighted that “the rest of the world manages those sorts of developments without needing that external third party there”,41 while Leasehold Knowledge Partnership told us that, “Almost nowhere else in the world continues with the archaic and deeply flawed leasehold system.”42 However, freeholders and managing agents noted that this did not necessarily mean that those other countries had preferable systems. For example, Richard Silva (Long Harbour) told us, “all those jurisdictions, without exception, have problems with those tenures.”43

25. As we will go on to outline in this report, too often leaseholders, particularly in new-build properties, have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance

33 Q375 (Matthew Jupp, UK Finance)
34 National Leasehold Survey 2016, Leasehold Advisory Service
35 Barry Gardiner MP (LHR0470) and Q5 (Jim Fitzpatrick MP)
36 Leasehold: A Life Sentence, NAEA Propertmark, September 2018
37 And family and trust law.
38 Q460 (Professor Nick Hopkins, Law Commission)
39 Q411 (Guy Fetherstonhaugh QC)
40 Anonymous (LHR0001)
41 Q460 (Professor Nick Hopkins, Law Commission)
42 Leasehold Knowledge Partnership (LHR0611)
43 Q222 (Richard Silva, Long Harbour)
of power in existing leases, legislation and public policy is too heavily weighted against leaseholders, and this must change. Our report sets out various recommendations for how this might happen.

26. We believe that there is a clear distinction between flats sold on leasehold terms and houses. We recommend that the sale of houses under leasehold should cease, as the Government has proposed, and urgent action be taken to enable those leaseholders in houses to be given the right to enfranchisement under appropriate low cost arrangements.

A transition to commonhold

27. The Commonhold and Leasehold Reform Act 2002 introduced a new form of tenure, known as commonhold, as an alternative to leasehold. The main provisions of the Act came into force in September 2004. Commonhold allows for the ownership of a freehold flat within a larger residential development, participate in the management of communal areas and shared services, without the existence of leases or third-party freeholders. This form of ownership also operates in the Australian Strata Title system and the condominium system in the United States, as well as Belgium, France and Germany.44

28. At its inception, the Government had assumed that commonhold would become the standard form of tenure for new-build blocks of flats.45 It was argued that commonhold had several advantages over the leasehold model, including that the freehold ownership did not expire, owners had an interest in the long-term well-being of the wider building and shared areas, and had much greater control over one-off costs and service charges. However, since September 2004, fewer than 20 commonhold properties have been registered, most of which have been of a very small scale—with a median size of 6.5 units, the largest being a caravan park of 30 units.46 We heard there were several reasons for the lack of commonhold developments.

Concerns with the legislation

29. Professor Nick Hopkins noted that there were “significant difficulties” with the commonhold legislation passed in 2002.47 In 2017, the Government asked the Law Commission to propose reforms “to re-invigorate commonhold as a workable alternative to leasehold, for both existing and new homes” as part of their Thirteenth Programme of Law Reform.48 The Law Commission published a consultation paper in December 2018, which sought to address the “various legal issues within the current commonhold legislation which affect market confidence and workability”, including legal issues around the creation of commonhold properties (including conversion), shared ownership, dispute resolution and enforcement powers.49

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44 Leasehold and Commonhold Reform, House of Commons Library, 14 December 2018, and Real Property Law and Procedure in the European Union: General Report, European University Institute (EUI) Florence/European Private Law Forum, 31 May 2005: “The fourth and most widespread model, to be found inter alia in Belgium, France, Germany and in England after the 2002 Commonhold and Leasehold Reform Act, combines separate ownership of an apartment with joint ownership “in forced indivision” of the land and the main structure of the building (such as walls and roof)”.
45 Leasehold and Commonhold Reform, House of Commons Library, 14 December 2018, section 4.1
46 Home Builders Federation (LHR0475)
47 Q454 (Professor Nick Hopkins, Law Commission)
48 Ministry of Housing, Communities and Local Government (LHR0548), para 9
49 Reinvigorating commonhold: the alternative to leasehold ownership, Law Commission, December 2018
30. We heard concerns from house builders that commonhold was not appropriate for mixed-use developments. Indeed, Professor Hopkins told us that that the Commonhold and Leasehold Reform Act 2002 was drawn up with modest developments in mind, and that the Law Commission did “not think the commonhold legislation we have is capable of dealing with the sort of mixed-use developments we see today”.

50 He explained that the legislation assumed a community of interest between all owners within a commonhold development, but in situations where residential owners share a block with commercial owners, these interests do not always align. This was a view echoed by the Home Builders Federation, who told us that the practicality of commonhold for mixed-use developments was uncertain:

[ ... ] in a layered commonhold structure the ability to alter service levels and relative contributions would ultimately rest with the uppermost tier, meaning that commercial operators may be subject to changes to the nature of the services it receives as a product of the commonhold decision-making process. This could affect business-critical services such as security or cleansing and the lack of certainty would either make commercial space less valuable or saleable, or involve fundamentally redesigning future schemes to clearly delineate commercial/leisure amenities and residential spaces even where this is inconsistent with good design and place-making principles.

51 As part of its project on commonhold reform, the Law Commission said it would “consider reforms to make the commonhold model more sophisticated and flexible”, to make it more appropriate for mixed-use developments and to allow different costs to be shared between unit-holders.

52

Wider reasons for the lack of commonhold developments

31. We were told that the reasons for the lack of commonhold developments since 2004 extended beyond inadequacies of the legislation. In particular, we heard there were a lack of incentives for developers to build commonhold, difficulties for residents in obtaining mortgage finance, and an unwillingness to take on the responsibility of managing a complex residential building.

Lack of incentive for developers to build commonhold

32. We heard that there were insufficient incentives for developers to build commonhold properties. Leasehold properties provide developers with either long-term revenue through ground rents, permission fees, lease extensions and enfranchisement fees, or an asset to sell on to a freeholder. Commonhold provides none of these incentives. This was an issue highlighted by several witnesses, including Giles Peaker, a housing lawyer, who told us he did not think developers would be interested in commonhold unless there was a level playing field, “That is, effectively, removing ground rents and enfranchisement costs, or

50 Q454 (Professor Nick Hopkins, Law Commission)
51 Home Builders Federation (LHR0475)
52 Reinvigorating commonhold: the alternative to leasehold ownership, Law Commission, December 2018
lease extension costs, as an income stream.”

Professor Hopkins expressed his view that the Law Commission’s work would not address all of the reasons that commonhold has not taken off, and the issue of incentives for developers would also need to be addressed:

There are no incentives for developers. If it is a choice between selling commonhold with no income streams and selling leasehold, which has them, there is an incentive for developers to build as leasehold [ … ] Whether you tackle that by taking away those incentives, by providing incentives to developers to build commonholds in other ways, or a combination of both, is not really a question for us at the Law Commission to answer.

**Access to mortgage finance**

33. We were told by developers and freeholders that there was a reluctance by lenders to provide mortgages for commonhold properties. Long Harbour and the Home Builders Federation both highlighted that fewer than half of the top 20 mortgage lenders in the UK were willing to lend on commonhold properties. Several possible reasons were given for this. Taylor Wimpey argued that commonhold associations were at greater risk of insolvency, due to the fact that they cannot ultimately forfeit a unit for non-payment of the commonhold assessments (contributions), and this had put lenders off participating in the market. City and Country Group also told us that lenders were averse to commonhold due to the risk of insolvency, which, they said, could lead to buildings falling into disrepair, with no funding or freeholder to step in and remedy the situation.

34. However, UK Finance, which represents lenders accounting for 98% of the mortgage market in the UK, told us that 40 providers loaned against commonhold, and that this represented “a fairly reasonable, functioning market”. Matthew Jupp, representing UK Finance, indicated that the key issue for lenders was a lack of commonhold developments, which made it very difficult to assess commonhold risk. He told us, “If we started to see more being created by developers, more lenders would come through in terms of being willing to lend on them.” Indeed, Mr Jupp explained that, for mortgage lenders, “As long as the property is well maintained and looked after and has all the necessary insurance [ … ] it is just another way to hold property.” He told us that lenders supported the proposals put forward by the Law Commission “to help relieve concerns” around the issue of insolvency in commonhold properties.

**Resident-controlled management models**

35. Freeholders, such as the Ground Rents Income Fund, warned that residents in commonhold would lose the “consumer protections” found in the leasehold model, which come from “the involvement of a large-scale, well-resourced, professional freeholder with...
a long-term interest in the development”. Richard Silva, representing Long Harbour, argued that “it is just too complicated to expect people in their spare time to run their own affairs”, particularly in buildings of several hundred units, or with complex engineering infrastructure, combined heat and power plants and mixed tenures of residents. The City and Country Group asked whether we could “reasonably assume the average resident director has the skills, knowledge and willingness to manage and tackle issues with blocks and not pursue their own agendas which are not for the benefit of the wider-residents and building”, in the same way as a professional freeholder. These concerns were also expressed by Dr Nigel Glen, representing the Association of Residential Managing Agents (ARMA), who outlined the potential complexity for residents seeking to manage their own buildings:

Do not underestimate how much effort there is in actually managing a building […] My concern is that you will have people who have potentially not the right set of skills or knowledge of property law in particular. When I had a company, there were many examples of people who had [resident management companies] instructing me to do things that, frankly, were against the law, but they did not know any better, because they were not familiar with the law.

36. The Home Builders Federation told us that it was not clear that a large proportion of apartment owners or prospective purchasers would necessarily wish to take an active role in the management and financial oversight of the communal facilities on their estate, or even be entirely responsible for the appointment, re-appointment and replacement of management companies. Indeed, ARMA highlighted that in Australia, which operates a model similar to commonhold, 37% of executive committees found it difficult to recruit members due to a variety of factors including time and perceived problems with the operation of the scheme. John Dyer, from the British Property Federation, told us that there were several examples of resident management companies having folded because not enough residents were willing to take on the administrative and legal obligations, telling us this was “an issue that I do not think there is a solution to.” Recruitment may be particularly challenging where the owners of properties are buy-to-let landlords, who may have less of a personal interest in the day-to-day management of a building.

37. However, Sir Peter Bottomley MP, co-Chair of the APPG on Leasehold and Commonhold Reform, told us it was wrong to suggest “that the leaseholders in my constituency are any less responsible or less capable than the freeholders” in managing their buildings, and noted that managing agents would remain responsible for the day-to-day management of buildings:

You do not need an outside person owning the building for it to be looked after properly. That is the managing agent at someone’s instructions, and
the instructions could be from the leaseholders if they have the right to manage or if they have taken over the ownership of the property. It is not needed.68

Commonhold can be made to work

38. Despite problems with the legislation and wider concerns outlined here, we heard that commonhold could be made to work. Richard Silva, from Long Harbour, told us commonhold would be most suited to smaller, residential developments with willing participants who are happy to work together.69 Other witnesses had greater ambition. Professor Hopkins expressed his view that a reformed commonhold would leave no need for the leasehold tenure:

I would certainly say that, once we have commonhold in a way that works for the needs we have for development today, we do not need long residential leases. Commonhold solves the two underlying concerns that we hear about leases. Those are, first, that they are wasting assets and, secondly, that you have that relationship of opposition between the freeholder and leaseholder. Once commonhold is there and it is working, if you want a system of ownership that removes those underlying concerns with leasehold, you can use commonhold.70

39. We heard calls for leasehold to be banned for newbuild properties generally (rather than just for houses), including from the Conveyancing Association, the Federation of Private Residents’ Associations and individual leaseholders.71 Sir Peter Bottomley MP noted that it would not be possible to convert existing leasehold properties to commonhold immediately, because there were so many properties affected.72 Instead, Martin Boyd of Leasehold Knowledge Partnership called for “a gradual transition of the existing stock”, a process of building new commonhold properties and providing realistic means for leaseholders to convert.73

40. Several witnesses argued that there should continue to be a choice for residents between leasehold and commonhold. Guy Fetherstonhaugh QC expressed his view that there should not be a compulsory conversion to a commonhold, arguing that making people convert was a really bad idea: “There will be some people who think leasehold is fab and who will not want to change”.74 This was a view shared by the Minister for Housing and Homelessness, who told us “It is all about choice”.75

41. We also heard that a ban on leasehold properties could have significant unintended consequences for retirement community residents and operators.76 ARCO (Associated Retirement Community Operators), which is the main body representing both the private and not-for-profit Retirement Community sector in the UK, told us that leases

68 Q11/Q54 (Sir Peter Bottomley, APPG on Leasehold and Commonhold Reform)
69 Q221 (Richard Silva, Long Harbour)
70 Q456 (Professor Nick Hopkins, Law Commission)
71 Conveyancing Association (LHR0390), Federation of Private Residents’ Associations (LHR0311) and, for example, Mr Chas Stewart (LHR0025)
72 Q55 (Sir Peter Bottomley MP, APPG on Leasehold and Commonhold Reform)
73 Q55 (Martin Boyd, Leasehold Knowledge Partnership)
74 Q430 (Guy Fetherstonhaugh QC)
75 Q468 (Heather Wheeler MP, Minister for Housing and Homelessness)
76 ARCO - Associated Retirement Community Operators (LHR0111)
provided the legal basis for the obligations that exist between operators to residents, from residents to operators and residents obligations to one another.\textsuperscript{77} Leases also established the requirement for residents to meet the eligibility criteria to reside within a Retirement Community. ARCO warned that an outright ban on leasehold, including leasehold houses, would mean that its members would not be able to build and offer houses, only flats, at future developments. Similarly, the Retirement Home Builders Group told us that leasehold should remain available for the retirement sector, as “retirement housing needs a long-term steward to provide the care, support and maintenance services that are fundamental to the retirement living lifestyle.”\textsuperscript{78}

\textbf{42. We urge the Government to ensure that commonhold becomes the primary model of ownership of flats in England and Wales, as it is in many other countries.} The Government was right to have asked the Law Commission to review the legislation concerning commonhold, in particular to make it easier to convert leasehold properties to commonhold, and we urge the Government to act quickly once this review is completed to implement the Law Commission’s recommendations. However, if the Government is serious about promoting commonhold as a viable alternative to leasehold, it must also ensure that the incentives to build leasehold properties—particularly, monetary ground rents and permission fees—are more limited. At the same time, the Government will need to ensure that concerns regarding commonhold properties are meaningfully addressed, including ensuring appropriate resident participation in the management of buildings. This might include the provision of training to residents in management roles and ensuring external expert support is made available in extreme circumstances.

\textbf{43. Our expectation is that once commonhold legislation is reformed, leaseholds begin to convert, and more commonhold developments are brought forward, leasehold as a tenure will become increasingly redundant.} While it may be the case that some retirement properties and the most complex, mixed-use developments would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with much greater control for residents over service charges and major works.

\addcontentsline{toc}{section}{References}
\textsuperscript{77} ARCO - Associated Retirement Community Operators (LHR0111)
\textsuperscript{78} Retirement Home Builders Group (LHR0588), para 28
2 Accusations of mis-selling

44. The National Leasehold Campaign told us that they had evidence of “the blatant mis-selling of leasehold homes by developers’ salespeople, with misleading or lack of critical information to enable consumers to make an informed choice when buying a leasehold home.” Indeed, in the written evidence we received, we heard several accusations of mis-selling, primarily relating to false promises by developers’ salespeople and a failure of developer-recommended solicitors to highlight onerous terms in leases. This chapter explores these accusations of mis-selling and makes recommendations for how to provide greater clarity for prospective purchasers in the sales process.

Lack of clarity in the sales process

45. In a recent report, NAEA Propertymark found that 78% leasehold house owners bought their home directly from a developer, rather than going through an estate agent, while 50% of those who purchased a leasehold house in the last 10 years were first-time buyers. Concerningly, they found:

… more than half (57%) didn’t understand what being a ‘leaseholder’ meant until they had already purchased the property, and 48% were unaware of the escalating ground rent until it was too late. When it came to completing the purchase, 65% used the solicitor their house builder recommended, who failed to tell 15% that they weren’t buying the freehold—they had to find it in the contract themselves. As a result, two thirds (62%) feel like they were mis-sold, while the majority (94%) regret buying a leasehold.

46. Many of the written submissions we received reinforced these findings. Several leaseholders, particularly house lessees, told us that, while they were aware they were buying a leasehold property, they were not told during the sales process how this was distinct from purchasing a freehold property or what the additional obligations would be. It was suggested to us that some leaseholders were even told by sales staff that their properties were ‘virtually freehold’:

She repeatedly told me that it was fine, the lease was virtually freehold because it was 999 years and that the only reason it was leasehold was because we would need to pay a service charge for the roads before the council adopted them in the future. She repeatedly told me that everyone would be in exactly the same position and at no point could freehold houses be sold on the estate. We were handed a leaflet, telling us all the benefits of leasehold, how it was virtually freehold—Mr Ashley Bishop

Repeatedly told ‘it’s basically freehold’ as it’s a 999-year lease and we can buy the freehold in two years anyway if we wish to. That this is the new way to sell houses everyone does it—Miss Alexia Dempsey

79 National Leasehold Campaign (LHR0534), para 3
80 Leasehold: A Life Sentence, NAEA Propertymark, September 2018
81 Mr Ashley Bishop (LHR0260)
82 Miss Alexia Dempsey (LHR0458)
When we were offered to buy the leasehold property at a fair market price, we were advised […] A 999-year lease is “equivalent to freehold” and neither you nor the next ten generation of yours would have to worry about renewing the leasehold—Mr Ellison Tomas.\footnote{Mr Ellison Tomas (LHR0126)}

47. This was a trend noted by the Government in its response to its consultation into \textit{Tackling unfair practices in the leasehold market}, where it said:

> It is clear that many consumers did not make an active or informed choice to buy a new build leasehold house. Far too many homeowners report being surprised and distressed to learn that they did not own the freehold on their properties and that instead they had bought a depreciating asset, and/or to find that the freehold had been sold to a third-party investor. In many cases the cost to purchase the freehold had risen considerably, sometimes running into tens of thousands of pounds.\footnote{Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response, Department for Communities and Local Government, December 2017, para 35}

48. We also heard evidence from leaseholders that they were unaware of the terms within their leases at the point of sale, with some accusing their solicitors of negligence—which we explore later—and others telling us that developers’ salespeople failed to disclose these details to them. For example, Mrs Jody Murphy told us:

> We now realise that we have an annual rent that can double every 10 years and can then be sold on and any kind of amount of money can be demanded from us from someone we don’t know who is just trying to line their pockets at the expense of myself and my family and many others in this position. Had I have known this at point of sale we would not have purchased the property.\footnote{Mrs Jody Murphy (LHR0620)}

49. Developers strongly rejected the accusation that they had mis-sold properties, arguing that leaseholders must have known what they were purchasing, given safeguards in the mortgage and legal process. Jason Honeyman, from Bellway, said, “I do not always subscribe to the idea that people were unaware of what they were buying.”\footnote{Q193 (Jason Honeyman, Bellway)} David Jenkinson, representing Persimmon, told us he was not sure what more developers could have done:

> You have to remember there are five clear points of contact when this would have been made out. At the reservation stage, it is clearly made out. They sign a reservation form. We are trained to tell them. When they meet their brokers, this has to be factored into their financial viability before they even apply for a mortgage. They had to know it was a lease. There is no way the solicitor would not tell them that it was a leasehold property and explain the ground rent. When they apply for their mortgage, it has to be filled in on the mortgage application form. Then, finally, the valuer takes account of it, and I have read the [UK Finance] rules. I am not sure what more we can
do. I just cannot reconcile the information you are being told with how they
would not know. They may not fully understand the implications of it, but
they must have known it was leasehold.87

50. Several organisations called for the implementation of a standardised key features
document to be provided at the start of the sales process by developers or estate agents
which would clearly outline the tenure of a property, the length of the lease, the ground
rent and permission fees. For example, the National Trust called for “some form of
key facts document which professional advisers have to give to leaseholders when they
purchase a lease (whether an existing or new lease).”88 The Conveyancing Association
called for anyone marketing a leasehold property to provide upfront information, with
Beth Rudolf explaining:

The idea of upfront information is key [ … ] Something where all that
information is available and set out in a “what that means to you” way, as
you describe, would make a huge difference. People could then make an
informed choice before they put their offer in, understanding what it means
to them now.89

51. It is clear that many of the leaseholders we heard from were not aware of the
differences between freehold and leasehold at the point of purchase, in particular the
additional costs and obligations that come with a leasehold property. The Government
should require the use of a standardised key features document, to be provided at the
start of the sales process by a developer or estate agent, and which should very clearly
outline the tenure of a property, the length of any lease, the ground rent and any
permission fees.

Promises to purchase the freehold

52. We received a substantial number of submissions accusing developers of reneging
on promises made by their sales teams to allow leaseholders to purchase their freeholds
at an agreed price after two years. Leaseholders told us that their freeholds had been
subsequently sold on—without having given them the opportunity to purchase the
freehold themselves—to third party investors, who were not willing to allow leaseholders
to purchase their freeholds at the same price offered during the sales process. It was
surprising—and revealing—how many similar stories we heard, of which these were just
a small sample:

When the majority of us bought our new-build houses, we were told [ … ] “Do
not worry; you can buy it after two years for a couple of thousand pounds”
[ … ] Unbeknown to us, by the time we got to our two years, when we were
legally entitled to buy our freehold via enfranchisement, our freeholds had
been sold on in the interim [ … ] For me personally, the price rocketed from
£3,000 or £4,000 up to £13,000—Katie Kendrick90

Told by the sales executive that the lease could be bought at a later date and it
would cost in the region of £5,000. At no point was it mentioned that the lease

87 Q194 (David Jenkinson, Persimmon)
88 National Trust (LHR0463), para 14
89 Q357 (Beth Rudolf, Conveyancing Association)
90 Q59 (Katie Kendrick, National Leasehold Campaign)
could be sold on to another company [...] The developer sold the lease on without our knowledge within 12 months of being at the property. Residents on the estate have enquired about buying their lease and have been quoted £10,000 plus. On top of this figure are the legal fees to complete the process. This is far more than originally told by the sales executive—Ian Ashmore91

In the verbal conversation with the saleslady at the time [...] She said, “Okay, you can buy the freehold at any point for about £5,000” [...] The freehold was sold, 11 months later, to an offshore investor. It was not until the summer of 2016 [...] they wrote to the management company for a quote to buy the freehold. That costs £108, by the way, just to ask for a quote. The quote they got back was over £50,000. We held a residents meeting, because somebody else had written and said, “That cannot be right. It must be a typo”. They got a different number but that was over £40,000—Jo Darbyshire92

53. Developers denied that leaseholders had been misled during the sales process. In correspondence, Bellway told us, “We do not accept the position of some customers that they were given a verbal offer whereby they could purchase the freehold of their property at a future date for an agreed price”, noting that this would constitute an option to purchase the property without an end date, which is not permitted by law.93 However, developers admitted that they often sold freeholds without consultation with leaseholders. Jason Honeyman, representing Bellway, told us that this was not a scandal:

Yes, we are [...] It is how we have always operated as a business. I am sure that is not the answer you want [...] I am not sure I subscribe to it as a scandal. You are offered at the point of sale a freehold and a leasehold, and the law says that you have the right to acquire the freehold after two years of living in it. You are right. You are quite right. You are 100% right that I sell that basket of freeholds to an investor without asking the customer whether they would like to buy it again.94

54. The Landlord and Tenant Act 1987—described to us by Guy Fetherstonhaugh QC as “probably judges’ least favourite piece of parliamentary drafting” due to the number of loopholes it presented95—placed a duty on freeholders of blocks of flats to offer a ‘right of first refusal’ to leaseholders when they are seeking to dispose of their interest.96 There is no duty on a freeholder of a house to inform the leaseholder of a change in ownership, nor does the leaseholder have a right of first refusal to buy the freehold interest at that point. It has been suggested that leaseholders of houses should be given a right of first refusal to ensure that freeholders offer the sale of the freehold interest to the leaseholder before selling to a third party. In its response to its consultation into Tackling unfair practices in the leasehold market, the Government suggested that transfers to third parties without the leaseholder’s knowledge were not in consumers’ best interests, and it would “consider
introducing a right of first refusal for house lessees.” The Law Commission is also looking at a potential right of first refusal for house lessees as part of its Thirteenth Programme of Law Reform.

55. An extension of the right of first refusal was a change supported by several organisations, including Taylor Wimpey, but others told us that the right of first refusal required more fundamental reform. Indeed, the Law Commission noted in its enfranchisement consultation “suggestions that the right should be abolished or, if retained, improved.” Housing lawyer, Giles Peaker, expressed his view that the right of first refusal needed to be revisited, in particular the ability of companies to avoid the right of first refusal by transferring shares in a freehold to another company. Developers are able to avoid the right of first refusal by contracting with the third party before granting the lease to the home buyer; or they can register the freehold interests to an “associated company.” The developer can sell the shares—and therefore the freehold interests—in that associated company to an investor. Under this arrangement, owner-tenants have no right of first refusal, leaving them to exercise any right to enfranchise. In August 2017, Business Insider reported that Persimmon and Bellway, had engaged in this practice.

56. The right of first refusal currently only applies to leasehold flat owners. The Government is right to seek to extend this right to leasehold house owners. The Government must also close the legal loophole allowing developers to sell freeholds to subsidiary companies, which means leaseholders lose out on the opportunity to purchase the freehold at whatever price it is offered to the new freeholder. This would benefit both new and existing properties.

57. The standardised key features document we recommend should also include, prominently, a price at which the developer is willing to sell the freehold within six months or, otherwise, a prescribed statement that the developer is not so willing, and that the purchaser would have to rely on their statutory rights.

Comparison with PPI mis-selling

58. Several witnesses drew parallels with the mis-selling of Payment Protection Insurance (PPI) by banks to 12 million customers. Jim Fitzpatrick MP, Deputy Chair of the APPG on Leasehold and Commonhold Reform, agreed, telling us that “It goes that deep.” Jo Darbyshire, representing the National Leasehold Campaign, said:

I know Jim said earlier that this was the PPI of the housing industry. For me, it absolutely is. I do not think it is a coincidence that all these developers suddenly adopted a very similar business model in terms of leasehold houses at the same time [ … ] Any kind of financial mis-selling, whether it be mortgages, PPI or pensions, has been subject to an independent inquiry

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97 Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response, Department for Communities and Local Government, December 2017, para 72
98 Taylor Wimpey (LHR0400)
99 Leasehold home ownership: buying your freehold or extending your lease, Law Commission, September 2018, Para 1.71(3)
100 Q435 (Giles Peaker)
101 How UK housebuilders exploit a legal loophole in freeholds that generates millions and takes rights away from property owners, Business Insider, 15 August 2017
102 Q23 (Jim Fitzpatrick MP)
and a redress scheme that sets out to put consumers back in to same financial position they would have been in, had they not been missold in the first place.\textsuperscript{103}

59. Others argued that this was a difficult comparison to make, with PPI having being mis-sold on a far larger scale and in a variety of ways which did not compare easily with unfair terms in leases. For example, PPI was sold “without the customer’s knowledge, or sold as ‘essential’, or sold to people such as the self-employed who would never be able to claim”, which did not apply in the case of leasehold.\textsuperscript{104} Asked whether it was fair to make a comparison with PPI, Jennie Daly, representing Taylor Wimpey, said she “would not agree with that comparison”, while Jason Honeyman emphasised that “I do not believe we have mis-sold”\textsuperscript{105} The Minister for Housing and Homelessness told us the Government did not agree that leasehold sales practices were akin to the mis-selling of PPI:

I find that a very difficult comparison because, in effect, with PPI, you were sold something you really did not need, whereas this is completely different, isn’t it? It is a contract and there was legal advice, but perhaps people are caught up in the moment because it is their first purchase and it is incredibly exciting: “That is the estate we want to live in, in that village, and this is the only place that you can get a property.” It is very difficult [ … ]\textsuperscript{106}

60. In November 2018, the Secretary of State wrote to the Competition and Markets Authority (CMA)—a non-ministerial department with responsibility for enforcing consumer protection legislation to tackle practices and market conditions that make it difficult for consumers to exercise choice—urging them to undertake a market study into the effects of onerous ground rents and to bring a test case, “to empower thousands of leaseholders to challenge the terms of their leases and would have a significant effect on the industry, bringing pressure on it to voluntarily address the issues.”\textsuperscript{107} However, the Minister explained that the CMA had been “quite strong in saying that it does not think that there needs to be an inquiry because we know the facts”, noting the recent Government consultation into the issue and this inquiry.\textsuperscript{108} Indeed, a CMA spokesman recently said that “the issues around ground rent clauses are well known and a market study would shed little further light”.\textsuperscript{109} However, others have called on the CMA to use its powers to enforce competition law, including the enforcement of prohibitions on the use of unfair terms or unfair business practices. LKP argued that the CMA’s inactivity meant individual leaseholders had been left to fight their own cause.\textsuperscript{110}

61. Developers denied that their sales teams deliberately misled leaseholders with partial sales information and false promises of purchasing their freeholds at an agreed price. But the number of near-identical stories from leaseholders reflects a serious cross-market failure of oversight of sales practices. Some affected leaseholders may have a strong claim that their properties were mis-sold. The Competition and Markets

\textsuperscript{103} Q79 (Jo Darbyshire, National Leasehold Campaign)
\textsuperscript{104} How the PPI scandal unfolded, The Guardian, 5 May 2011
\textsuperscript{105} Q206 (Jennie Daly, Taylor Wimpey, and Jason Honeyman, Bellway)
\textsuperscript{106} Q515 (Heather Wheeler MP: Minister for Housing and Homelessness)
\textsuperscript{107} Letter from Rt Hon. James Brokenshire MP, Secretary of State for Housing, Communities and Local Government, to Dr Andrea Coscelli, Competition and Markets Authority, 2 November 2018
\textsuperscript{108} Q516 (Heather Wheeler MP, Minister for Housing and Homelessness)
\textsuperscript{109} Furious minister demands inquiry into homes sold on toxic leases as he attacks ‘culture of consumer exploitation’ in housing industry, Mail Online, 9 March 2019
\textsuperscript{110} Q24 (Martin Boyd, Leasehold Knowledge Partnership)
Authority should investigate mis-selling in the leasehold sector within the next six months and, where appropriate, make recommendations for appropriate compensation, with the option of enfranchisement.

Conveyancing solicitors

62. While developers have been accused of providing misleading sales information or imposing onerous terms in leases, ultimately it was the responsibility of conveyancing solicitors to ensure prospective purchasers of leasehold properties were aware of the ownership structure and lease terms and their effect. It is the conveyancing solicitors, as opposed to the developers, who could be legally liable for failing to highlight these terms to prospective leaseholders. It was concerning, therefore, to hear several reports from leaseholders that they had been advised, incentivised or required by the developer to use a specific conveyancing solicitor, who subsequently did not advise them of onerous terms in their leases.

Relationship between developers and solicitors

63. It is not uncommon in other industries for companies to recommend a panel of solicitors to their clients, and there is nothing inherently wrong or unlawful in developers doing so. Developers and solicitors representatives told us that such relationships were for the benefit of customers. David Jenkinson told us, “The real reason Persimmon uses a panel of solicitors is to save the customer money because they only need to review the title once. If you go each individual time, the biggest part of actual cost from a sale is to review the title.” Jonathan Smithers, representing the Law Society of England and Wales, highlighted the volume of work for new developments:

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

64. As a matter of professional conduct, the Solicitors Regulation Authority (SRA) makes it clear that any arrangement with a third party who introduces business “should not jeopardise that trust by, for example, compromising your independence or professional judgement.” Jonathan Smithers explained that “the important thing is that the buyer has the ability to have independence of choice, so the developer does not say, ’I will only accept your offer if you go with this conveyancer.’”

111 Q204 (David Jenkinson, Persimmon)
112 Q339 (Jonathan Smithers, Law Society of England and Wales)
113 Solicitors Regulation Authority (SRA) Handbook, chapter 9
114 Q339 (Jonathan Smithers, Law Society of England and Wales)
65. However, we received considerable evidence of developers incentivising and insisting on the use of a specific conveyancing solicitor. Katie Kendrick, representing the National Leasehold Campaign, told us that members of her group had been offered “free carpets, free lawn in the back gardens [ ... ] a discount off other parts of the house, if they were to use their panel of solicitors”. Other leaseholders told us developers were more insistent:

We originally wanted to use the solicitor we used on our previous house purchase. Taylor Wimpey held back information from them to the point that my solicitor told us if we didn’t use [their] recommended [solicitor] there was no way we would complete within the eight-week deadline—Mr Lee Bennett

[ ... ] people had been told that they could not use their own solicitors and were made to use the ones that Persimmon recommended—Mrs Rebecca Delaney-Cowley and Mr Dean Cowley

Taylor Wimpey pushed me to use their recommended solicitor by offering £500 towards legal fees and threatened that the sale would fall through if I didn’t complete within 28 days, and Bannister Preston were the only solicitors they could be sure would hit this deadline—Mr Robert Bater

66. Reflecting on some of this evidence, Beth Rudolf, representing the Conveyancing Association, told us that conveyancing solicitors should have refused the instruction in where clients have been unethically acquired:

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

67. Consumers must be able to access independent and reliable legal advice when purchasing a property. Their interests cannot be served where they are coerced into using developer-recommended conveyancing solicitors, who rely on repeat business from developers and may not be inclined to put their client’s interests first. The Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor. Further, as outlined above, key sales information should be provided at the start of the sales process in a standardised key features document, so purchasers are in no doubt about the costs involved in purchasing a leasehold property.

**Failure to highlight onerous terms**

68. The reports of such coercive practices are particularly concerning in the context of evidence that some developer-recommended conveyancing solicitors failed to draw clients’ attention to the ownership structure or onerous lease terms. We received several submissions making such allegations, of which these are just a small selection:

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115 Q62 (Katie Kendrick, National Leasehold Campaign)  
116 Mr Lee Bennett (LHR0565)  
117 Rebecca Delaney-Cowley & Dean Cowley (LHR0638), section 2  
118 Mr Robert Bater (LHR0137)  
119 Q344 (Beth Rudolf, Conveyancing Association)
I was told we needed to complete quickly and that we MUST use their recommended solicitor. This solicitor never warned us about permission fee to re-mortgage, build a conservatory and even change the colour [of] our front door. Also, we were never told that the ground rent was increasing with RPI every 10 years—Mr Joel Da Costa

[...] the sale was rushed through with the solicitor that I was told to use [...] I was not told exactly what the implications were for the onerous terms of the lease, and everything was made out to be part of the normal process of buying a house—Dr Ellen Fry

We were urged by Taylor Wimpey to use a recommended solicitor as it would speed things up during the sales process. At no point was it brought to our attention by the recommended solicitors that there was a doubling ground rent or that there were such restrictive covenants in place meaning we would have to ask permission to make any alterations to the property and face exorbitant fees just to ask permission—Mr Dan Hamer

69. While developers may have included onerous terms in leases, it was the responsibility of solicitors to highlight these to their clients. As noted in case law, a solicitor should advise about an unusual clause in terms “appropriate to the comprehension and experience of the particular recipient”, and if a solicitor should be “alerted to risks which might elude even an intelligent layman”, it is their duty to advise the client about the risks. Jennie Daly, representing Taylor Wimpey, also emphasised that it was the solicitor’s responsibility to act independently on behalf of their client, whether or not they were identified as part of a panel of solicitors: “Even if they are on the panel that we recommend, the first duty of that solicitor is to their client. It is the solicitor’s responsibility to ensure the customer is fully aware of both the ownership structure of the property and the terms of any lease.”

70. Solicitors’ representatives highlighted that buyers had very little scope to negotiate with the large developers, however onerous the proposed terms were. Jonathan Smithers, representing the Law Society, said:

[... ] I think that the number of developers getting much smaller and the power that they now have to effectively impose their conditions—because the buyer cannot go anywhere else to buy a house; they have to buy it from them—means they have much greater market power to say, “These are the papers. Take it or leave it.” The solicitor acting for the buyer is not really in a position to negotiate. All they can do is say to the buyer, “These are the terms. If you want to buy the house, you have to sign here, because I cannot negotiate individual terms in the way that, 20 years ago, I could with a local developer.”

120 Mr Joel Da Costa (LHR0195)
121 Dr Ellen Fry (LHR0225)
122 Mr Dan Hamer (LHR0127)
123 County Personnel (Employment Agency) Ltd v Alan Pulver & Co [1987] 1 WLR 916, 922. See also, Crozier R., Home sweet home... despite the leasehold?, (Sep 1998) 168 NLJ 7809, p15
124 Q192 (Jennie Daly, Taylor Wimpey)
125 Q364 (Jonathan Smithers, Law Society of England and Wales)
71. Further, the solicitors’ representatives argued that, late in the sales process, many buyers are unable to consider such details. Jonathan Smithers told us it was difficult for solicitors to know how much of the legal information—which, “for a brand-new development, it could be an A4 lever-arch file”—the buyer had absorbed.126 Beth Rudolf, from the Conveyancing Association, highlighted the difficulties in communicating complex information to prospective leaseholders who had “already fallen in love with the property”, and called for more information to be provided at the very start of the sales process:

The problem is that, by the time the buyer gets [the legal documentation], with 14 days to exchange contracts or lose their deposits or lose their incentives, they are not in a position to absorb any of it. The time they should have been told was the point when they viewed the property [...]. By the time the poor buyer gets hold of all of this, they have already fallen in love with the property. They have already worked out where their sofa is going to go and where the kids will go to school. They are in no position to absorb all of this and then make an unemotional decision about whether to continue to proceed, at a point when they are properly committed financially, after paying for searches, surveys, mortgage product fees—probably as much as £1,200. 127

72. It was extremely concerning to hear from so many leaseholders that their developer-recommended solicitors had failed to advise them of onerous terms in their leases. Such evidence suggests that some conveyancing solicitors have become too close to developers and did not put their client’s interests first. This does not, however, absolve developers of the blame for taking advantage of their dominant position and creating such leases in the first place. Buyers should be encouraged to ensure that they seek independent legal advice.

Routes to redress

73. In its response to its consultation into Tackling unfair practices in the leasehold market, the Government said it would support consumers in seeking redress from solicitors who failed to fulfil their legal duty to inform prospective purchasers of leasehold properties of escalating ground rents and other onerous terms:

To help consumers access justice we will work with the redress schemes and Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently.128

74. This appears welcome—although the specific actions and timings remain imprecise—as the National Leasehold Campaign informed us that leaseholders were not clear about routes to redress, and those that had tried to seek redress for mis-selling and negligent conveyancing solicitors had found it “extremely difficult to get any kind of meaningful resolution.”129 Martin Boyd, representing Leasehold Knowledge Partnership, told us that

126  Q365 (Jonathan Smithers, Law Society of England and Wales)
127  Q337 (Beth Rudolf, Conveyancing Association)
128  Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response, Department for Communities and Local Government, December 2017, para 71
129  National Leasehold Campaign (LHR0534), para 32
some claims against solicitors had been made, but many had become subject to Non-Disclosure Agreements, which had made it difficult for other leaseholders to gauge the benefits of taking such action.\textsuperscript{130} He also noted the cost of pursuing legal action, which for many people—particularly the first-time buyers who bought leasehold houses—was prohibitive. Jo Darbyshire, from the National Leasehold Campaign, also raised this issue, noting that she would need to either pay for the legal action herself, or find a solicitor willing to take it on a no win, no fee basis—of which, there were very few.\textsuperscript{131}

75. The usual limitation period for negligence claims is six years after the damage has been suffered. For negligent conveyancing advice, this would usually run from the date the lease was acquired. If the purchaser did not know the ’material facts’—roughly, enough that a reasonable person would think it serious enough to litigate (assuming the defendant admitted fault and could afford to pay up)—then the period would run for three years from the discovery of those facts, but not more than 15 years after the lease was acquired.\textsuperscript{132} The complexity of proving professional negligence, as well as the time limits, were noted by leasehold campaigners as key barriers to redress:

The situation is complicated by the six-year rule as many leaseholders did not realise their conveyancing solicitor was negligent until six years or more had passed from the point of sale. Although the six-year rule can be challenged, a favourable outcome is not guaranteed, and leaseholders need to find funds for a challenge.\textsuperscript{133}

76. Which? noted that individual professional negligence claims are one route of redress, but this would result in claims against hundreds of individual solicitors rather than developers.\textsuperscript{134} They also noted that the costs of litigation were a deterrent to leaseholders, so suggested that a dedicated Alternative Dispute Resolution (ADR) scheme—an independent arbiter between the service provider and the customer when an initial complaint cannot be resolved, avoiding the need to go to court—may be required. Jonathan Smithers, representing the Law Society, told us that he had not seen any evidence “that a separate redress scheme would be better than the existing redress scheme”, and told us that the Legal Ombudsman was a sophisticated regulator which was well-placed to provide a route to redress.\textsuperscript{135}

77. In November 2018, the Secretary of State wrote to the Solicitors Regulation Authority (SRA) urging them to investigate complaints against conveyancing solicitors, saying he was “troubled by some of the evidence I have received.”\textsuperscript{136} The Minister for Housing and Homelessness reported that the SRA advised referring complaints to the Legal Ombudsman:

The SRA have been very [ … ] clear that, where there is any evidence of lack of clarity as between the guidance for a solicitor or a conveyancer who they

\textsuperscript{130} Q24–5 (Martin Boyd, Leasehold Knowledge Partnership)
\textsuperscript{131} Q70–1 (Jo Darbyshire, National Leasehold Campaign)
\textsuperscript{132} Limitation Act 1980 s 14A(?7) and 14B
\textsuperscript{133} National Leasehold Campaign (LHR0534), para 32
\textsuperscript{134} Which? (LHR0600)
\textsuperscript{135} Q359 (Jonathan Smithers, Law Society of England and Wales)
\textsuperscript{136} Letter from Rt Hon. James Brokenshire MP, Secretary of State for Housing, Communities and Local Government, to Paul Philip, Solicitors Regulation Authority, 2 November 2018
are acting on behalf of, because of course they are acting on behalf of the person buying the property, get the evidence to the SRA and let us get the Legal Ombudsman involved.\textsuperscript{137}

78. The Government needs to act on its promise to help leaseholders seek to redress where they have been let down by their conveyancing solicitors. \textit{The Government should undertake a review within the next six months to determine whether existing routes, including to redress the Legal Ombudsman’s scheme, are satisfactory or whether a new Alternative Dispute Resolution (ADR) scheme should be established for leaseholders with legitimate claims against their solicitors.}

\textsuperscript{137} QS16 (Heather Wheeler MP, Minister for Housing and Homelessness)
3 Onerous lease terms

79. The campaign for reform of the leasehold sector has gained prominence in recent years with the revelation that some developers had imposed onerous ground rent terms in the leases of newbuild flats and houses, leaving many leaseholders with ground rents that would rise well beyond the rate of inflation, and sometimes unable to sell their properties or re-mortgage. In addition, many modern leases contain high permission, or consent, fees: charges levied by the freeholder for the right to, for example, alter a property, re-mortgage, keep a pet, or even change a doorbell. This chapter explores the evidence we have received regarding these terms and proposes that they be prohibited from future leases and remedied in existing leases.

Ground rents

80. Ground rent is whatever a leaseholder must give to the landlord periodically in return for receiving the exclusive right to occupy land. It is usually money.\(^\text{138}\) But rent is not essential to a lease, and can be wholly nominal—often referred to as a “peppercorn”.\(^\text{139}\) The Minister for Housing and Homelessness told us that the level of ground rent bore no relation to the quality of maintenance and services provided to the building:

One of the things I do find utterly fascinating is that a building might be beautifully maintained at a peppercorn ground rent or poorly maintained at £500 ground rent. The amount of ground rent payable is no indication of the quality of the maintenance and services provided, and people need to get that into their heads a little bit, please.\(^\text{140}\)

As ground rents have nothing to do with the level of maintenance of a building—which is covered by the service charge—it is right to consider what leaseholders do, in fact, receive in return for their ground rent.

81. Freeholders argued that the ground rent provides them with an incentive to participate in the market; to be the “custodian of the building or estate” who provides the “very long-term view on the decisions affecting the building and grounds”.\(^\text{141}\) A monetary ground rent, Long Harbour told us, provided an “economic incentive for us to invest in the various teams of professionals who work in our business, undertaking the stewardship role” and “police the managing agents”.\(^\text{142}\) As outlined in the first chapter, others questioned whether freeholders provided a significantly higher level of service than that which could be provided by leaseholders themselves.

82. Developers told us that ground rents helped to reduce the initial price paid for a property, with leasehold houses being sold for less—typically, 20 times the annual ground rent—than for equivalent freehold properties.\(^\text{143}\) Representatives of Persimmon and Taylor Wimpey reported that, as they ended the practice of selling leasehold houses, they

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\(^{138}\) Though it can take other forms (such as goods or services).

\(^{139}\) Antoniades v Villiers [1990] 1 AC 417, 430 (CA, reversed on other grounds in the HL). Peppercorn: other formulations such as “a red rose” have also found favour: see, for example, Souglides v Tweedie [2012] EWCA Civ 1546, [2013] Ch 373.

\(^{140}\) Q513 (Heather Wheeler MP, Minister for Housing and Homelessness)

\(^{141}\) Home Builders Federation (LHR0475) and as outlined in Chapter One

\(^{142}\) Q230 (Richard Silva, Long Harbour)

\(^{143}\) For example, Q111 (Jason Honeyman, Bellway)
increased the price of the remaining, now-freehold units. We received several written submissions which contested this point, reporting that freehold properties on their estate had been sold at the same price that they had paid for a leasehold property. For example, Mr Ashley Bishop, a Persimmon customer, told us, “I realised that people living on the estate, who moved in the same day as myself were in fact freeholders of their houses. The same houses, for the same price, but freehold.” Sir Peter Bottomley MP, co-Chair of the APPG on Leasehold and Commonhold Reform, said ground rents did not reduce property prices:

A second major problem is when people start realising that ground rents have no purpose whatsoever […] The answer is nothing […] Homes are sold at market price. Those who have persuaded or hope to persuade Government or this Committee that having a ground rent reduces the price to the people they are supplying the home to are wrong, and they know they are wrong. I hope at some stage, perhaps as a result of this inquiry, they will be told that.

83. The Minister was right to say that ground rent bears no relation to the level of maintenance or quality of service provided to leaseholders—indeed, that is the function of the service charge. Many buildings are well managed without any ground rent being paid. While monetary ground rents may provide an economic incentive for professional freeholders to participate in the market, we have already concluded that—other than in complex, mixed-use developments and retirement properties—most do not provide a significantly higher level of service than that which could be provided by leaseholders themselves. While developers told us that leasehold houses are routinely sold at a lower price than their freehold equivalents, it is concerning that several leaseholders provided evidence that this was not a consistent policy.

Onerous ground rents

84. We received a considerable number of written submissions from leaseholders who told us they had onerous ground rent terms. However, there is no agreement about what constitutes an onerous ground rent, and this has led to disagreement as to the scale of the problem. The Government told us that “what one person considers onerous may be acceptable to another.” David Jenkinson, representing Persimmon, expressed his view that an onerous ground rent was one “that materially affects the customer’s ability to sell or dispose of their home”, while Jason Honeyman, from Bellway, told us it was where “a ground rent value becomes disproportionate to the value of a home.”

85. Matthew Jupp from UK Finance, which represents mortgage lenders, noted that the UK Finance Lenders’ Handbook did not define onerous, but required ground rents “to be predictable, to be understood as to what the level is going to be, to be set out quite clearly, and to allow that to increase periodically by a reasonable amount”, but that this

144 Q110 (David Jenkinson, Persimmon) and Q111 (Jennie Daly, Taylor Wimpey)
145 Mr Ashley Bishop (LHR0260)
146 Q3 (Sir Peter Bottomley, APPG on Leasehold and Commonhold Reform)
147 Letter from Heather Wheeler MP, Minister for Housing and Homelessness, 18 February 2019
148 Q96 (David Jenkinson, Persimmon, and Jason Honeyman, Bellway)
would be for individual lenders to determine.\textsuperscript{149} He noted, however, that there were some similarities between what lenders say is ‘reasonable’, with some using a percentage of the property value, and others a particular figure up to £250.\textsuperscript{150}

86. Most developers and freeholders agreed that ground rents which doubled more frequently than every 20 years should be considered onerous. Bellway, Long Harbour and Wallace Partnership Group told us this, while Taylor Wimpey apologised to their customers for the “unintended consequences” of imposing such terms, which were “not consistent with our high standards of customer service.”\textsuperscript{151} Some highlighted that doubling ground rents should only be considered onerous in certain circumstances, including David Jenkinson, who noted that "if you are doubling £2, for example, it would only be £4… What is more important is the starting amount, where it ends up and whether it is capped", a point also made by the Minister for Housing and Homelessness, who said, “Equally, with all of these things, it really does depend on where you start. If your ground rent is £250 and it doubles, that is a lot of money. If your ground rent is £25, that is slightly more doable.”\textsuperscript{152}

87. Others, however, flatly denied that doubling ground rents were inherently onerous. The Chief Executive of Redrow, John Tutte, told us that his company had sold 347 properties with 10-year doubling ground rents.\textsuperscript{153} These had an average starting ground rent of £400 per annum, which would rise to £12,800 in its fiftieth year and remain at that level for the remainder of the lease. Mr Tutte told us he considered these ground rents to be proportionate to the value of the properties concerned and had only ever received one complaint from a customer experiencing difficulty selling their property as a result of a doubling ground rent clause:

As the terms of Redrow’s 10-year doubling ground rent leases were capped, and the properties are in expensive areas of London (typical prices were well over £600,000), it is considered that the ground rent will remain proportionate to the likely value of the properties in 50 years’ time, assuming values increase in line with normal house price inflation; as a result we do not consider it necessary to seek to change these limited number of leases.\textsuperscript{154}

88. Many groups, particularly representatives of leaseholders, told us that any ground rent that rose above 0.1% of the value of a property should be considered onerous.\textsuperscript{155} This definition was based on a growing trend by mortgage lenders—notably Nationwide, but reportedly also Santander, Barclays and others—to restrict lending on properties with a ground rent over 0.1% of the property value.\textsuperscript{156} It was reported that four of the top 20

\textsuperscript{149} Q380 (Matthew Jupp, UK Finance)\textsuperscript{150} Q381 (Matthew Jupp, UK Finance)\textsuperscript{151} Q137 (Jason Honeyman, Bellway), Q224 (Mick Platt, Wallace Partnership Group, and Richard Silva, Long Harbour) and Taylor Wimpey (LHR0400)\textsuperscript{152} Q134 (David Jenkinson, Persimmon)\textsuperscript{153} Letter from Mr John Tutte (Group Chief Executive, Redrow), 10 January 2019\textsuperscript{154} Letter from Mr John Tutte (Group Chief Executive, Redrow), 10 January 2019\textsuperscript{155} For example, National Leasehold Campaign (LHR0534), para 38\textsuperscript{156} See, for example, \textit{Ground rents for new leaseholders to be capped at £10 a year}, Which?, 15 October 2018 (“mortgage lenders have cottoned on to leasehold issues, with Nationwide and Santander refusing to approve mortgages… where the annual ground rent is more than 0.1% of the property’s value”) and \textit{Barclays sheds light on ground rent policy}, FT Adviser, 12 September 2018, (“Ground rent up to 0.1% of the current market value is acceptable. They may accept ground rent up to 0.2% of the current market value subject to review”)
lenders will not lend if the ground rent is more than 0.1% of the property value.\textsuperscript{157} The 0.1% definition was supported by Anthony Essien, Chief Executive of the Leasehold Advisory Service (LEASE), who said:

I would say an onerous ground rent would be anything above 0.1%, perhaps, of the value of the property [ ... ] If that is also attached to a regular review of ground rent—let us say every five or 10 years, or for shorter periods of time—it is going to become particularly onerous.\textsuperscript{158}

89. We also heard strong objections to the notion that 0.1% was necessarily onerous. Richard Silva, Executive Director at Long Harbour, argued that it was “an incredibly dangerous assertion”:

It appears that you have unilaterally defined an onerous ground rent as one which exceeds 0.1% of the property value… Does this mean that a property worth £190,000 and has a ground rent of £200 per annum it to be defined as onerous? This is an incredibly dangerous assertion to make in the context of a functioning leasehold market of 4.3 million properties. This definition does not correlate with our experience of dealing with thousands of property transfers every year and it is at odds with current lending guidelines… We would strongly urge you to reconsider the way you have defined onerous to prevent damaging existing leasehold values across the country.\textsuperscript{159}

90. A further definition of an onerous ground rent refers to the fact that, where ground rents exceed £250 per year or £1,000 per year in London, a leaseholder is classed as an assured tenant. Under the \textit{Housing Act 1988}, this means leaseholders could be subject to a mandatory possession order for even small sums of arrears. The Government has noted that this is “disproportionate and unfair” and has committed to bring forward provisions to ensure that leaseholders are not subject to these provisions in future leasehold legislation.\textsuperscript{160}

91. Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder’s ability to sell their property or obtain a mortgage. In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties.

\textbf{Ground rents in existing leases}

92. The lack of any consensus about what constitutes an onerous ground rent has led to disagreement as to the scale of the problem. Leasehold campaigners argue that there are close to 100,000 people affected by terms that leave them with a ground rent in excess of 0.1% of the property value.\textsuperscript{161} We note that, when the Secretary of State wrote to the CMA in November 2018, he too cited this 100,000 estimate, warning that these leaseholders

\textsuperscript{157} Letter from Richard Silva (Executive Director, Long Harbour), 11 January 2019
\textsuperscript{158} Q311/Q314 (Anthony Essien, Leasehold Advisory Service)
\textsuperscript{159} Letter from Richard Silva (Executive Director, Long Harbour), 11 January 2019
\textsuperscript{160} Ministry of Housing, Communities and Local Government (LHR0548), para 36
\textsuperscript{161} For example, Q17 (Martin Boyd, Leasehold Knowledge Partnership)
“cannot sell and cannot move”. He also highlighted that “most major lenders… refuse to award mortgages where the ground rent exceeds 0.1% of the property value or where such onerous clauses exist”. It is difficult to make such an estimate, however, given the reluctance of some developers and freeholders to provide figures, as we found out in correspondence. However, we were grateful to Redrow for providing us with an estimate of the number of their properties with a ground rent in excess of 0.1% of the property value (fewer than 15% of 5,000 leasehold properties built in the last five years), which made it all the more disappointing that the other developers we wrote to were unable to do so.

Developers and freeholders argued that the numbers affected were actually far lower, based on the more restrictive definition of doubling ground rents. Persimmon and Bellway consequently told us they did not have any onerous leases. Long Harbour undertook research alongside specialist property law firm Winckworth Sherwood LLP and found that there were just 12,000 properties with either a 10- or 15-year doubling ground rent clause. The Government does not have its own data for the numbers of properties affected by onerous terms—noting that leases are private contracts of which there is no public record—and relied on data provided by third parties, including developers, the freehold sector and campaign groups. The Minister for Housing and Homelessness told us that either figure—100,000 or 12,000—demonstrated that only a small proportion of the sector was affected:

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

Proportionality is, perhaps, better defined in terms of the effect on those leaseholders with onerous ground rent terms. We heard from hundreds of leaseholders who considered themselves to have onerous ground rents, be those doubling ground rents or those that had simply risen above an affordable level. We heard of leaseholders unable to sell their properties, having difficulties re-mortgaging, feeling that they had been mis-sold properties—as outlined in the second chapter—and telling us of the impact this has had on their health and wellbeing. This is a very small selection of the hundreds of stories leaseholders told us:

I purchased [my house] for £106,000 in 2015. The initial annual ground rent was £240, it doubles every 10 years so recently increased to £480. Today I think I’d be lucky to sell for £80,000 if I could find a buyer [ … ] this now leaves me in a negative equity situation with no prospect of ever being able to move—Anonymous

I was not told until I had signed contracts by Bannister Preston of the doubling ground rent [ … ] I am 62 years old and live alone. In time I will need to sell

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162 Letter from Rt Hon. James Brokenshire MP, Secretary of State for Housing, Communities and Local Government, to Dr Andrea Coscelli, Competition and Markets Authority, 2 November 2018
163 Letter from Chair to Bellway, Persimmon and Taylor Wimpey, 21 November 2018, and subsequent responses: Bellway (11 December), Persimmon (10 December) and Taylor Wimpey (12 December), and later correspondence from Bellway (26 February) and Redrow (28 February).
164 Q96 (David Jenkinson, Persimmon, and Jason Honeyman, Bellway)
165 Long Harbour (LHR0593)
166 Letter from Heather Wheeler MP, Minister for Housing and Homelessness, 18 February 2019
167 Q497 (Heather Wheeler MP, Minister for Housing and Homelessness)
168 Anonymous (LHR0066)
this property and move into something more suitable for my needs. As things stand, I will not be able to sell and recoup my investment in order to fund my retirement. I worry a lot about the future as I have no family at all and I am completely on my own. I do not know what I will do when I can no longer live in this house—*

Mrs Kathryn Jones*  

I was aware that the apartment was leasehold and that there was a charge of £300 per annum doubling every ten years [ ... ] Last year, in Spring 2017 I decided to put the apartment on the market [ ... ] At the very last minute the purchaser sadly had to pull out because she was unable to get a mortgage. She had approached three different providers and each surveyor had given the apartment a zero value. Needless to say both she and I were extremely upset and disappointed [ ... ] as I’m sure you can imagine I have suffered with extreme anxiety due to the worry of this and have had to seek medical help. The worry of not knowing whether my apartment is worth anything and the worry of if I will ever be able to sell it and pay off my mortgage is becoming unbearable—*Ms Lindsay Moores*

95. **It is unacceptable that some leading developers have in the past sought to use their market dominance to exploit their customers through the imposition of terms leading to disproportionate ground rents. There is no excuse for such onerous terms, which are symptomatic of the imbalance of power in the leasehold market and are causing considerable distress to affected leaseholders.**

96. **We were disappointed that, despite making two written requests for information, some developers were not willing to provide us with clear information as to the numbers of leasehold houses and flats that they had sold with ground rents exceeding 0.1% of the value of the properties. We are sceptical that the industry does not readily have access to data on the houses they sold and the ground rents they set. There needs to be greater transparency from the industry and we call on them again to publish this information, to help clarify the true scale of the issue.**

**Remedies for existing leaseholders**

97. **Opportunities for leaseholders to remedy onerous ground rents through their own endeavour are limited. The principal option would be for leaseholders to enfranchise, removing the ground rent altogether—although not necessarily the permission fees, as we will explore later—or extend their leases, in which case the ground rent would reduce to a peppercorn. However, as noted by Professor Nick Hopkins, those with the most onerous ground rents are likely to find it hardest to enfranchise:**

> Enfranchisement enables you to extend your lease or buy your freehold. If you are extending your lease, your ground rent goes to a peppercorn. If you have a lease with an onerous ground rent, enfranchisement can help you to buy out that ground rent, but you are placed in a double difficulty. The mere
fact your ground rent is onerous means that the cost of enfranchisement is going to be more, because the ground rent is one of the things taken into account in calculating how much you have to pay to enfranchise. 171

While enfranchisement may be relatively simple, if not inexpensive, for house lessees, it is far harder for those in flats. Collective enfranchisement rules require that at least 50% of the flat owners in the building participate in order to force the freeholder to sell, and the legal process is complex. 172

98. The options for leaseholders with onerous ground rents are limited. House owners are entitled to pay to enfranchise after two years of ownership, thus removing any obligation to pay ground rent, onerous or otherwise. However, this would only be possible if the cost of enfranchisement—which we call to be made “substantially cheaper” later in this report—is both reasonable and affordable for the house owner. Flat owners, similarly, are entitled to enfranchise, although this is a much more difficult process, requiring the consent of 50% of the owners in a residential block of flats. Otherwise, leaseholders are reliant upon the benevolence of their freeholder to remove unreasonable terms.

99. Some developers and freeholders have introduced remediation schemes for existing leaseholders, offering them the opportunity to convert leases with doubling ground rents to ones where the ground rent instead increases by the Retail Prices Index (RPI). The Government has said that it wants to see this kind of support extended to all those with onerous ground rents, including second hand buyers, and for customers to be actively contacted by developers to be given offers. 173 However, others have suggested that such schemes are insufficient, with Jo Darbyshire, representing the National Leasehold Campaign, telling us that, “They are as little as they think they can possibly get away with.” 174

100. One of the most high-profile voluntary conversion schemes was implemented by Taylor Wimpey in April 2017, to allow customers with doubling ground rents to convert to a lease based on RPI ground rent reviews at 10-year intervals. 175 Jennie Daly, Group Operations Director, explained that £130 million had been set aside to compensate freeholders where leases had been sold on. Ms Daly accepted that progress had been slow, but noted that the first agreements with freeholders had been completed in September 2018 and the scheme was gaining momentum. 176 However, Leasehold Knowledge Partnership told us that they remained “deeply concerned” about the Taylor Wimpey offer, with Martin Boyd explaining that the conversion offer was only made to original buyers—as opposed to those who purchased these properties second hand—and the numbers of leaseholders who had accepted a conversion was very small. 177 In subsequent correspondence, Jennie Daly informed us that, as at December 2018, 2,495 leases had already been varied, a further

171 [Q449 (Professor Nick Hopkins, Law Commission)]
172 Collective Enfranchisement: Getting Started, Leasehold Advisory Service
173 Ministry of Housing, Communities and Local Government (LHR0548), para 38
174 [Q85 (Jo Darbyshire, National Leasehold Campaign)]
175 Taylor Wimpey (LHR0400)
176 [Q129 (Jennie Daly, Taylor Wimpey)]
177 Leasehold Knowledge Partnership (LHR0611) and [Q18 (Martin Boyd, LKP)]
2,000 had been validated as requiring variation and would be amended in due course, and £35 million of the available £130 million had been utilised, with an additional £29 million registered in the system.\footnote{Letter from Jennie Daly (Group Operations Director, Taylor Wimpey), 12 December 2018}

101. Which? reported that many leaseholders were unsure whether to accept conversion offers from developers and freeholders, knowing that the Government was looking at the issue of reform of the sector and may propose alternative arrangements.\footnote{Which? (LHR0600)} Several leaseholders also told us that they were unsure whether to take the offers made to convert to RPI, particularly given that the revised contracts would see ground rents rise throughout the term of the lease, whereas the doubling ground rents tended to be capped after 50 years. Jo Darbyshire told us:

> I consider myself to be a fairly bright person, but I really do not know whether I should take this offer. It is so difficult to know, on a number of fronts. My doubling stops after 50 years. If I convert to RPI, it continues for the whole term of the lease. In my lifetime in the property, I may pay less ground rent but, if I do not enfranchise, the person who has the house after me and after them will pay considerably more than if it had stayed doubling. In theory, the cost to enfranchise, if I convert to RPI, is less than if I enfranchise on a doubler, but that all depends on the capitalisation rates that the valuers use to value it [ … ] Do I play the odds? If I do, because I bought from Taylor Wimpey, in addition to my deed of variation, I have to sign a settlement agreement, which waives all my rights to claim further from Taylor Wimpey [ … ] It is a clever exercise in capping their corporate liability. I really, genuinely do not know what to do.\footnote{Q84 (Jo Darbyshire, National Leasehold Campaign)}

102. A number of leaseholders told us that converting to an RPI-based mechanism would continue to leave them with an onerous ground rent.\footnote{For example, Mr Richard May (LHR0241)} Indeed, as outlined earlier, most definitions of an onerous ground rent tend to focus on the saleability or mortgage-ability of a property—the mechanism by which it increases is often less important. Developers and freeholders were clear that RPI was a legitimate mechanism for increasing ground rents, and much better than the doubling terms in some existing contracts. Jennie Daly (Taylor Wimpey) told us that RPI was used “merely to reflect the progressive value of money”, while Jason Honeyman (Bellway) said the purpose was to ensure “the value at the point of sale is in real terms the same value in 25 years’ time.”\footnote{Q97–99 (Jason Honeyman, Bellway) and Q100 (Jennie Daly, Taylor Wimpey)} Richard Silva (Long Harbour) also noted that RPI mechanisms would considerably reduce enfranchisement costs, when compared to doubling ground rents.\footnote{Q233 (Richard Silva, Long Harbour)} Further, Matthew Jupp (UK Finance) told us that RPI was acceptable to most lenders, notwithstanding those lenders who would restrict lending on properties where the ground rent is more than 0.1% of the property value.\footnote{Q388 (Matthew Jupp, UK Finance)}

103. However, Which? noted that, while an offer to convert from a doubling ground rent to RPI offered short-term respite, not enough was known about how a move to RPI might
affect homeowners in future. Some leaseholders questioned why RPI had been chosen for these conversion schemes, noting that the Governor of the Bank of England, Mark Carney, had recently described RPI as an inflation measure with “known errors”, which had “no merit”, and should no longer be used in government contracts. Jo Darbyshire noted that house prices did not increase in line with RPI and, therefore, “You are going to get houses and flats where, potentially, the ground rent goes above and below this 0.1% threshold as property values rise and fall and the ground rent rises and falls”, arguing that this was not sustainable in the long term.

104. It is clear that some developers and freeholders have not implemented voluntary conversion schemes at all. Jim Fitzpatrick MP, representing the APPG on Leasehold and Commonhold Reform, highlighted that, despite the initial optimism around the Taylor Wimpey scheme, “the knock-on just has not happened.” We heard that some freeholders were willing to amend leases, but only in return for high fees. One anonymous leaseholder reported being offered new leasehold terms in exchange for £22,000:

The initial annual ground rent was £240, it doubles every 10 years so recently increased to £480 [...] The freeholder has offered me some terms that I am not happy with. For £22,000 they are prepared to reduce the ground rent to £200 per annum subject to increases in line with RPI every 10 years. They will extend the lease term back to 125 years. I had to apply for the terms via a company called Homeground Management Ltd and they charged me £108 for this.

105. Noting the reluctance of some freeholders and developers to voluntarily amend leases with onerous terms, the Minister of Housing and Homelessness told us that she would be “eyeballing” them:

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

106. We are not convinced of the merits of the voluntary developer- and freeholder-led schemes that offer to convert leases with doubling ground rents to RPI-based review mechanisms, which have been supported by the Government. RPI-reviews may still see ground rents rise above 0.1% of a property’s value, which many lenders consider to be onerous. Most require RPI reviews across the entire length of the lease, as opposed to a defined initial period, while others demand high fees in exchange for removing onerous terms. These offers are not good value when compared to the Government’s proposed cap for ground rents on new leasehold properties. It is unacceptable that many

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185 Which? (LHR0600)
186 Mark Carney calls time on RPI inflation measure, Financial Times, 30 January 2018
187 Q83 (Jo Darbyshire, National Leasehold Campaign)
188 For example, Letter from Mr John Tutte (Group Chief Executive, Redrow), 10 January 2019
189 Q20 (Jim Fitzpatrick MP, APPG on Leasehold and Commonhold Reform)
190 Anonymous (LHR0866)
191 Q575 (Heather Wheeler MP, Minister for Housing and Homelessness)
freeholders and developers are not even offering this bare minimum. The Government’s threat to “eyeball” freeholders and developers is simply not good enough; leaseholders need stronger action from central Government—as we call for in this report.

“Retrospective” legislation

107. Stronger action might include legislation to amend onerous terms in existing leases. This was supported by Anthony Essien, the Chief Executive of LEASE, who told us that, “If the developers and owners of these onerous ground rents do not intervene [ … ] the Government should intervene.” Others were strongly opposed to Government intervention, with Taylor Wimpey arguing that, “due regard should be given to ensuring that future looking legislation is not applied retrospectively.”

108. Leading housing lawyers told us that human rights legislation would make it difficult to amend leases that had already been signed, but not impossible. Amanda Gourlay told us there were “undoubtedly difficulties with legislating retrospectively”, noting Article 1 Protocol 1 to the European Convention on Human Rights, which relates to the peaceful enjoyment of possessions, and non-deprivation of possessions except in the public interest and in accordance with the law, subject to the right of the state to control use of property in accordance with the “general interest”. Giles Peaker also highlighted this as a challenge, but explained that retrospective legislation would nevertheless be “technically possible”:

Dealing with the situation for past leases could be done legally. It would undoubtedly, I think, face quite a serious Article 1, protocol 1 challenge if you scrapped ground rents altogether, and probably, looking at the Strasbourg case law, successfully. That said, the legal mechanics of it are one thing. It is a policy decision in the end, rather than a legal one. It would be technically possible to do it.

109. Under human rights legislation, the right to receive rent is a possession, but a restriction on rent is control of the use of property, rather than expropriation. To be justified, the restriction on rent must be lawful, in the general interest and proportionate. To be lawful, an interference must comply not only with domestic law, but be compatible with the rule of law and not operate arbitrarily. Importantly, human rights legislation does not prevent changes in the law from “properly affect[ing] legal relationships which were established before the changes occurred”.

110. As to the general interest, the courts have ruled that they “will accept the legislature’s judgement as to what is ‘in the public interest’ unless that judgement is ‘manifestly without reasonable foundation’.” To be proportionate, a measure must “strike a ‘fair balance’ between the demands of the general interest of the community and the requirements of the

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192 Strictly speaking, it may not be right to refer to this sort of legislation as “retrospective” (see, eg, Craies on Legislation (11th ed 2017) para 10.3.7 and Bennion on Statutory Interpretation (7th ed 2017) para 5.12), but witnesses referred to “retrospective” so we shall adopt the adjective.

193 Q319 (Anthony Essien, Leasehold Advisory Service)

194 Taylor Wimpey (LHR0400)

195 Q413 (Amanda Gourlay) and European Convention on Human Rights

196 Q414 (Giles Peaker)

197 Mellacher v Austria (1989) 12 EHRR 391 (ECHR), para 43, and Mellacher, at 44; more recently see Zammit v Malta [2015] ECHR 751, para 52

198 Axa General insurance v Lord Advocate [2011] UKSC 46, at [120]

199 Re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill [2015] UKSC 3, at [48]
protection of the individual’s fundamental rights.”

In this context, the level compensation is an important factor in the determination of proportionality. Full compensation, even for the total deprivation of property, is not always required, although confiscation without reasonable compensation will usually be disproportionate, and confiscation without any compensation will usually require “exceptional circumstances.”

The Court of Appeal has said:

[ … ] provided the state could properly take the view that the benefit to the community outweighs the detriment to the individual, a fair balance will be struck, without any requirement to compensate the individual. Should this not be the case, compensation in some appropriate form may serve to redress the balance, so that no breach of Article 1P1 occurs.

111. While retrospective legislation may indeed be technically possible, we heard some objections to such action on points of principle. For example, the Law Society of England and Wales told us that retrospective legislation could undermine the rule of law and adversely affect consumers in the long-term:

It is important to consider the essential public interest in the maintenance of the rule of law. This entails upholding and applying a stable system of rules that govern public interactions and contracts [ … ] For this reason the Law Society would not normally support retrospection with regard to legislation. Knowledge of what the law entails, and confidence that the law will be upheld, is essential to maintain the stability of complex markets such as the property market, in which a number of different actors hold significant interests. Any threat to this stability could have a significant adverse effect on consumers and property owners, which could (depending on what form any retrospective legislation were to take) have an impact on property values, property transactions, housing supply and the wider economy.

They argued that, if the Government were to consider introducing retrospective legislation, it should first conduct a comprehensive impact assessment to examine how any proposals would affect the market, consumers, and other actors including developers, investors, pension funds and estate agents.

112. The Government initially told us they were not able to use legislation to amend existing leases, with the Secretary of State telling us, “the nature of contract law means legislation cannot change the terms of leases that have already been signed.” However, the Minister for Housing and Homelessness later explained that the legal advice was similar to our own interpretation; that retrospective legislation would likely necessitate compensation to freeholders and the Government’s concern was mainly about the cost—which she said would be “horrendously expensive” for over four million leaseholders in England—as opposed to it being impossible to amend existing leases.

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200 R&L SRO v Czech Republic [2014] ECHR 703 (ECtHR). There are expositions of this in various authorities. In the UK courts, see Re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, at [48].
201 R v SoS for Health ex p Eastside Cheese [1999] 3 CMLR 12
202 R v SoS for EFRA ex p Trailer & Marina (Leven) Ltd [2005] 1 WLR 1267, at [58]
203 Law Society of England and Wales (LHR0555), paras 3.1–3.5
204 Law Society of England and Wales (LHR0555), para 3.6
205 Letter from the Secretary of State, 23 July 2018
206 Q480 (Heather Wheeler MP, Minister for Housing and Homelessness)
113. Were compensation deemed to be necessary, it is right to consider how this might be funded. We note that many of the developers who imposed these onerous leases have made significant profits in recent years, including Persimmon, who paid their former Chief Executive a bonus of £75 million last year and are reportedly due to announce a profit of over £1 billion for 2018, and Taylor Wimpey, who recently announced a pre-tax profit of £810 million. It is also important to note that not all four million leaseholders have onerous terms in their leases—as outlined earlier, higher estimates suggest 100,000 leaseholders are affected, while others put the figure as low as 12,000—and compensation need not be at full value.

114. We note that it would be legally possible for the Government to introduce legislation to remove onerous ground rents in existing leases. While it would be difficult to change the terms of existing leases, it would not be impossible. Retrospective legislation could be compliant with human rights law. We understand that controlling rent would not be confiscation of property but control of its use. Thus, provided not imposed arbitrarily, it is likely Parliament could amend the terms of existing leases ‘lawfully’. Compensation would most likely result in a scheme being compliant with human rights legislation; the impact on society could also justify a scheme.

115. Indeed, the Government proposes to reduce the premium payable to enfranchise, effectively buying freeholders out of a contractual income stream at a discount. There is little economic difference between reducing the statutory discount and reducing the contractual income stream, and this is likely to be equally justifiable in human rights terms.

116. Freeholders would probably need to be compensated in order to ensure the legislation is compliant with human rights law. But that compensation need not necessarily be full value. The Government should undertake a comprehensive study of existing rents to determine the scale of the problem of onerous ground rents and the level of compensation which would be consistent with human rights law.

117. Our view is that, within any retrospective legislation, existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism. While not as low as the Government’s proposed limit on ground rents for future properties, such a cap would reflect that leaseholders entered into a contract expecting to pay a modest ground rent over the course of their tenure and that freeholders have made an investment with a legitimate expectation of receiving some future revenue. Leaseholders should not face any charge, such as administrative and legal costs, or conditions for the variation of their lease to amend the level of ground rent as a consequence of retrospective legislation.

118. Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers’ solicitors.

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Ground rents in future leases

119. In its response to the consultation into Tackling unfair practices in the leasehold market in December 2017, the Government committed to “introduce legislation so that, in the future, ground rents on newly established leases of houses and flats are set at a peppercorn (zero financial value)”\(^\text{208}\). In October 2018, the Government published a further consultation paper, Implementing reforms to the leasehold sector in England, which provided additional details of the Government’s proposals to reduce future ground rents, although not to zero financial value:

Whilst the current practice and interpretation is that a peppercorn rent has nothing more than a notional or nominal value, we are concerned that if we do not make clear what we mean by a nominal sum, it may misinterpreted in the future [ … ] We therefore propose making £10 (ten pounds) per annum a standard cap for future ground rents, whether the leasehold has been purchased through Right to Buy or on the open market.\(^\text{209}\)

120. The Minister for Housing and Homelessness told us that £10 should be interpreted as being a ‘peppercorn’, noting that her personal lease “was peppercorn and 30 years ago it was £25. Who says what “peppercorn” means?”\(^\text{210}\) Some legal experts argue that there is nothing especially difficult in law about specifying that future rents for leasehold should be no more than a peppercorn—or be abolished altogether. However, the Minister for Housing and Homelessness explained that a maximum ground rent of £10 had been chosen because “social housing leaseholds are at £10, and [ … ] there would be equity between social housing leaseholders and private leaseholders.”\(^\text{211}\)

121. The Government intends that the Housing Act 1980 should set a precedent for a nominal maximum ground rent for future leaseholders.\(^\text{212}\) But the decision to set social housing ground rents at £10 in 1980—the equivalent today of around £42—was controversial when introduced. It may be interesting to note that, during the relevant debates in the House of Lords, some peers attempted to persuade the then Government either to index-link the figure, to follow the value of money, or to abandon it in favour of a “peppercorn”.\(^\text{213}\) The Government insisted £10 was to represent only a “token” but gave no explanation for favouring £10 over a peppercorn of zero financial value.\(^\text{214}\)

122. The Government’s proposal to cap ground rents on new leasehold properties at £10 per year commanded very little support in our evidence. Several witnesses called on the Government to return to its initial proposal to implement a peppercorn of zero monetary

\(^{208}\) Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response, Department for Communities and Local Government, December 2017, para 69

\(^{209}\) Implementing reforms to the leasehold system in England, Ministry of Housing, Communities and Local Government, para 3.11–15

\(^{210}\) Q499 (Heather Wheeler MP, Minister for Housing and Homelessness)

\(^{211}\) Q499 (Heather Wheeler MP, Minister for Housing and Homelessness)


\(^{213}\) See, for example, HL Deb 9 June 1980 c93, HL Deb 26 June 1980 c1809, and HL Deb 26 June 1980 c1856

\(^{214}\) HL Deb 21 July 1980 c50; The then Government Minister said the rent was not intended to secure continuing income but to “represent in a necessarily token way” the landlord’s interest. He expressed interest in “peppercorn” idea but dismissed it, saying only “I fear that on this point the Government will not want to move.”
value. Guy Fetherstonhaugh QC told us he would “do away with ground rents altogether”, while Giles Peaker expressed his view that “as long as they exist, even at a relatively minor level, it will be a major impediment to the adoption of commonhold.”

123. Sir Peter Bottomley MP, representing the APPG on Leasehold and Commonhold Reform, said there was “no need for a monetary ground rent in leasehold, arguing that the £10 proposal was only to give “some kind of monetary value to the freehold.” He asked, “What is the point of £10 to anybody?”, a point made by a number of witnesses from the property sector, including Dr Nigel Glen (ARMA)—”The £10 is a very strange number, to be quite honest”—and John Dyer (British Property Federation):

[ ... ] if you are going to set a ground rent there is no point in having it at £10. The cost of collecting that is more than the £10. You might as well go to a peppercorn [ ... ] You either limit it or you do not. I do not see the point in having a £10 cap.

124. Martin Boyd, representing Leasehold Knowledge Partnership, warned that a monetary ground rent had “all sorts of legal implications that are not helpful to the consumer.” For example, we heard concerns that a monetary ground rent could provide grounds for the freeholder to bring forfeiture proceedings for unpaid rent, in a way not be possible with a ground rent of zero financial value. Housing lawyer, Amanda Gourlay, told us that it was possible to bring forfeiture proceedings if you have a ground rent of £10 in arrears for more than three years: “There is a difference. As long as one has a monetary value there is, in law, action that a landlord can take against a leaseholder, providing the ground rent is in arrears for more than three years.”

125. Freeholders opposed the Government’s proposal for the opposite reason; that £10 was too low, disproportionate to the scale of the problem of onerous rents and would drive responsible investors out of the market. Richard Silva, representing Long Harbour, warned the Government that, with a £10 ground rent, freeholders would no longer be able to invest “in the various teams of professionals who work in our business, undertaking the stewardship role”. Instead, professional freeholders would withdraw from the sector, because there would no longer be an economic incentive to participate, which would “potentially open up an opportunity for less professional individuals and/or organisations to buy up these assets.”

126. The Minister for Housing and Homelessness reported that there were freeholders prepared to participate in the market who were not interested in a ground rent, citing Peabody—a housing association in London—as one example. In subsequent correspondence, the Minister reiterated that the Government had heard from freeholders who said they would be interested in managing properties with low ground rents, noting the housebuilder Retirement Security, which had built 1,600 retirement leasehold flats with zero ground rent, and Notting Hill Genesis, a housing association that does not
oppose the capping of ground rents at £10. However, freeholders strongly rejected this evidence, with Long Harbour noting that Peabody were a “not-for-profit enterprise and therefore does not represent the professional freehold market”, and to say that freeholders would not be deterred from investing in the sector with a £10 rent, “would categorically not be the case in the professional sector, where the vast majority of leases exist.”

127. We received mixed evidence from representatives of the retirement community. ARCO (Associated Retirement Community Operators) told us that its members did not oppose a ban on ground rents, “as these fees are not essential to ensure the current operation and future growth of the Retirement Community sector.” However, the Retirement Home Builders Group sought an exemption for retirement properties from the Government’s proposed cap on ground rents, arguing that ground rents were used to “help cover the initial costs of construction, including for the significant shared facilities that are an essential ingredient to retirement developments.”

128. Freehold managers, CSJ Residential, told us they wanted to see the introduction of a “reasonable ground rent of, say, £200 per annum”, which, they argued, would “further the involvement of the responsible investor in order to protect the interests of leaseholders.” Freeholders, Consensus Business Group, reported that ground rent and review clauses that may be sufficient to retain institutional investment in the sector would require ground rents at the commencement of the lease to be set at the higher of £250 or 0.15% of the value of the unit, with rent reviews to be conducted at 5- or 10-year intervals by the increase in RPI upwards only.

129. We recommend that the Government should revert to its original plan and require ground rents on newly established leases to be set at a peppercorn (i.e. zero financial value). In most residential buildings, leaseholders receive very little in return for paying ground rent and it is unclear what value there is, for leaseholder or freeholder, in requiring a ground rent of £10. Monetary ground rents are also an impediment to the adoption of commonhold, which should be a greater priority for the Government, whilst they maintain a risk that forfeiture proceedings might be brought against leaseholders.

130. While the Law Commission is currently undertaking a programme of work to reform commonhold, it will take some years for its proposals to be implemented and for commonhold to become a realistic alternative for most leaseholders. Until that point, freeholders are likely to continue to play some role in the supervision of large and complex mixed-use developments—and we accept that there will be little incentive for them to do so without a monetary ground rent. The Government may need to implement an exemption for mixed-use buildings, until such point that the reforms proposed by the Law Commission and others lead to commonhold becoming a realistic alternative for leaseholders in more complex buildings. Any exempted ground rent should not exceed 0.1% of the present value of a property, up to a maximum of £250 per year.

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223 Letter from the Minister for Housing and Homelessness, 18 February 2019
224 Letter from Richard Silva, Long Harbour, 15 February 2019
225 ARCO - Associated Retirement Community Operators (LHR0111)
226 Retirement Home Builders Group (LHR0588), para 12
227 CSJ Residential (LHR0671), para 5.5
228 Consensus Business Group (LHR0589), section 3(c)
Permission fees

131. A lease may make provision for leaseholders to pay a fee to their freeholder under certain circumstances—often referred to as permission or consent fees. These are nominally to pay the freeholder’s costs when dealing with applications for such approvals, although permission fees are often disproportionate to the actual administrative, financial or time cost to the freeholder, as well as being intrusive and unnecessary for leaseholders. They are typically charged when leaseholders want to make alterations or extensions to properties (particularly house lessees), but have also been known to be charged for secondary issues, such as changing a mortgage provider.\textsuperscript{229} We also heard evidence of permission fees being included in the deeds of new-build freehold properties and enfranchised former-leasehold properties. Some campaigners, including the National Leasehold Campaign, have referred to this practice as “fleechold”.\textsuperscript{230} Several leaseholders told us about the onerous permission fees in their leases:

\[ … \] a neighbour informed me that she had contacted the freeholder for permission to [build a conservatory] and they wanted to charge her £3,500. This was to send out their own surveyor to produce a report on the build and then to give permission for it to happen. This was for a construction that did not need local council planning permission - totally unacceptable—\textit{Miss Catherine Williams}\textsuperscript{231}

They charged me around £200 for permission to change my mortgage—nowhere in my original lease states this. But to contest it I can only contact them in writing, which I will be charged an admin fee for—\textit{Ms Louise Jones}\textsuperscript{232}

In the group, we have seen examples of people having to pay to have a pet or to change a doorbell. It costs me £100 if I want to re-mortgage. Every time we contact the management company, it is £108 to ask for anything. That whole secondary income from our homes through permission fees was not even highlighted at all in the purchase—\textit{Jo Darbyshire}\textsuperscript{233}

132. The Government accepted that many people would regard these permission fees as constituting, “an unreasonable interference in the freedoms normally enjoyed by a homeowner.”\textsuperscript{234} They noted that leaseholders had found permission fees to be onerous because they can be excessive, they deter buyers, they are a formality, and they are uncapped. The Minister for Housing and Homelessness told us it was “disgraceful that this new model of doing business ever came to the fore” and said that her intention was to push freeholders to not just address onerous ground rents, but “changing completely the issue about permission fees.”\textsuperscript{235}

133. However, we also heard that there were circumstances in which it was appropriate for leaseholders to seek permission for certain alterations to their property. John Dyer,
representing the British Property Federation, told us that the freeholder or managing agent should be able to recover the reasonable costs they have incurred in granting consent for alterations to their properties:

As managing agent, you have to go in [ … ] to look at where that kitchen is, because you cannot put kitchens above bedrooms and that type of thing. You have to check that is correct. Wood flooring is another one, when someone puts in wood flooring, because the lease quite often says carpeting. You have to check there is adequate sound insulation. Someone has to check that. You have to have an approved specification. You have to sign it off with covenants in any consent that, if it causes a nuisance, you can still lay carpet on top. [ … ] there is a reasonable cost that managing agents, on behalf of freeholders, have to charge to be able to grant that consent in the first place. 236

Richard Silva, from Long Harbour, noted that the right of freeholders to charge ‘reasonable’ fees for such services was something that could be challenged at a First Tier Tribunal; although, as we will explore in the next chapter, many leaseholders are very reluctant to use existing dispute mechanisms, due to the legal cost and imbalance of power. 237 Further, costs involved in an agreed variation of the lease—which might be needed if, for example, a leaseholder wants to make alterations to the fabric of the building—fall outside this protection. 238 Other freeholders accepted that permission fees were a key source of income, used to cover wider operational costs. Mick Platt, representing Wallace Partnership Group, explained that, “Our entire operation is covered [ … ] by consent fees and permission fees.” 239

134. The National Leasehold Campaign told us that permission fees should be abolished, arguing that there was “no justification for the level of permission fees currently charged, other than to provide secondary income for freeholders at the expense of leaseholders.” 240 Others, such as Jason Honeyman of Bellway, argued that permission fees should be retained but capped, as it was reasonable for freeholders to recover their costs. Martin Boyd, representing Leasehold Knowledge Partnership, argued that they “should be reasonable”, noting that it was difficult for leaseholders to challenge such fees. 241

135. Concerns were also raised around the high charges for basic, and often unnecessary, tasks during the sales process for leasehold properties. The Conveyancing Association highlighted what it described as “the increasingly abusive practices of lease administrators”. 242 For example, the issuance of a Certificate of Compliance to confirm that the terms of the lease have been complied with—a process that should take between 10 and 20 minutes—on average costs £125, but can be as much as £250. A Notice of Charge, required if the incoming leaseholder has taken a mortgage and simply confirms the name of the mortgagee—a process which should take no more than 15 minutes—on average is charged at £84. In response to its consultation on Improving the home buying and selling

236 Q253 (John Dyer, British Property Federation)
237 Q262 (Richard Silva, Long Harbour)
238 Mehson Property Co Ltd v Pellegrino [2009] UKUT 119 (LC)
239 Q266 (Mick Platt, Wallace Partnership Group)
240 National Leasehold Campaign (LHR0534), para 46
241 Q173 (Jason Honeyman, Bellway) and Q41 (Martin Boyd, Leasehold Knowledge Partnership)
242 Conveyancing Association (LHR0390 and LHR0693)
process in April 2018, the Government said it would introduce a cap on such fees and would “investigate the best way in which this could be done”, without setting timescales for this work.\footnote{Improving the home buying and selling process, Ministry of Housing, Communities and Local Government, April 2018, para 180}

136. It is fair that freeholders should be able to pass on reasonable costs to leaseholders where these have been incurred in the necessary administration arising from a change instigated by the leaseholder. But many of the permission fees and administrative charges we have heard about are plainly excessive, exploitative and yet another example of developers and freeholders seeking to extract money from leaseholders who have very limited recourse to challenge such fees.

137. *Alongside its proposal to cap ground rents on future leasehold properties, the Government should require that permission fees in the leases of new-build properties are not permitted to exceed the true administrative costs incurred by freeholders. The Government should also introduce legislation to restrict onerous permission fees in existing leases, as we have recommended for onerous ground rent terms. Compensation for costs already incurred may be appropriate if terms in existing leases are found to have been unfairly imposed upon leaseholders.*

138. The growing practice of imposing permission fees in the deeds of new-build freehold properties and enfranchised former-leasehold properties is an unjustified intrusion upon homeowners which many campaigners have rightly referred to as ‘fleecehold’. *The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so.*

139. *The Government should set clear timescales for the implementation of its proposal to introduce a cap on the administration fees that are incurred during the sales process.*

**Onerous terms: are they ‘unfair’?**

140. We were told that onerous terms in existing leases should be challenged under the Consumer Rights Act 2015 as ‘unfair terms’. Professor Nick Hopkins, Law Commissioner, noted that “We have not really had the test cases identifying how far current law can resolve the real difficulties”, although he highlighted a recent Court of Appeal decision suggesting that, if the buyer had been legally advised during the sales process—which most buyers would be—it would not be possible for them to argue that the terms of their leases were unfair, because there was not an imbalance of power.\footnote{Q448/Q450 (Professor Nick Hopkins, Law Commission)}

141. Sir Peter Bottomley MP, representing the APPG on Leasehold and Commonhold Reform, expressed his view that, “the easiest way of dealing with this, in my view, is either by law or for the Competition and Markets Authority to declare that some of these terms are unfair and unenforceable.”\footnote{Q21 (Sir Peter Bottomley, APPG on Leasehold and Commonhold Reform)} The Competition and Markets Authority (CMA) could exercise its powers under section 130A of the Enterprise Act 2002, to conduct a market study for the purposes of considering whether something connected with the sale of leasehold land might adversely affect consumers and whether steps can and should be
taken to remedy that. The CMA’s powers include not only enforcement of competition law, but also the enforcement of prohibitions on the use of unfair terms or unfair business practices. Leasehold Knowledge Partnership said:

In other markets, legislative provisions cancel or mitigate unfair terms [...] If it is accepted 10-year double ground rent leases are onerous why can they not be deemed unfair and therefore subject to statutory review? Why should the leaseholder be burdened with additional costs in taking action?246

142. We note again, however, the Minister for Housing and Homelessness’s comment that the CMA had been “quite strong in saying that it does not think that there needs to be an inquiry because we know the facts” in the context of mis-selling, referring to the recent Government consultation and our own inquiry.247 However, neither report concluded whether these terms were indeed ‘unfair’ or ‘unenforceable’. This is a determination more appropriately made by the CMA, so there continues to be an opportunity for them to contribute its expertise in this area.

143. The Law Commission highlighted that it may undertake a future project examining the way in which unfair terms law applies to long leases, although this would be narrow and focus on the availability of unfair terms remedies under the Consumer Rights Act 2015 to more leaseholders (currently restricted to the initial buyer).248 However, they also noted that the project would be resourced from its core budget, which, since 2010, had been cut by 54% and, consequently, no commencement date had been set for this project. Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges at the Ministry of Housing, Communities and Local Government, told us that the Law Commission would be undertaking work on unfair terms, so it is evidently the Government’s expectation that this project will proceed in due course.249

144. The Government should immediately ensure that the Law Commission has adequate funding to extend its programme of work to identify how unfair terms law could apply to existing leaseholders.

145. Alongside a review of mis-selling in the leasehold sector, which we have called to be carried out within the next six months, the Competition and Markets Authority should exercise its powers under section 130A of the Enterprise Act 2002 to indicate its view as to whether onerous leasehold terms constitute ‘unfair terms’ and are, therefore, unenforceable.

146. Were the CMA to determine that onerous terms in existing leases are indeed unfair, or that they were mis-sold, the Government should take further action. Where leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest. In such circumstances, the Government should establish a clear and easily accessible route to compensation for affected leaseholders.

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246 Leasehold Knowledge Partnership (LHR0611)
247 Q516 (Heather Wheeler MP, Minister for Housing and Homelessness)
248 Law Commission (LHR0672), para 1.2
249 OS82–3 (Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges, Ministry of Housing, Communities and Local Government)
4 Service charges, one-off bills and dispute mechanisms

147. The evidence we received demonstrated very clearly that many leaseholders have significant concerns about high and escalating service charges. We heard that one of the most distressing experiences for leaseholders can be receiving a bill for tens of thousands of pounds for major works on their building; the fear that comes with needing to find money at short notice, but also the sense of injustice when freeholders and managing agents fail to keep costs to a reasonable level. While leaseholders have a right to challenge these charges through tribunals, many are reluctant to do so in practice, due to a fear of the legal costs, the threat of forfeiture and an imbalance of power in the process. In this chapter, we explore these concerns and make recommendations for how that balance of power might be more fairly realigned to put leaseholders’ interests first.

Service charges

148. The costs of the day-to-day management and maintenance of leasehold blocks—usually undertaken by a managing agent on behalf of the freeholder—is recoverable from leaseholders through a service charge. The Landlord and Tenant Act 1985 provides that service charges must be reasonable and that the services provided must be carried out to a reasonable standard. However, several leaseholders told us that their service charges were excessive, that they had been overcharged or were paying for services not received, and there was a lack of transparency, with large and hidden commission fees paid to the managing agents or freeholders. Indeed, the Government summarised the concerns they had heard from leaseholders regarding service charges: that they are uncapped, they seem indisputable and that many leaseholders reported that they received no discernible service for their money.250

149. The Leasehold Advisory Service (LEASE) reported that 29% of the calls they received in 2017–18 concerned service charges, while a 2016 survey from the same organisation found that 40% of leaseholders ‘strongly disagreed’ that service charges represented value for money.251 Anthony Essien, the Chief Executive of LEASE, explained that the complaints they had heard related the size of the service charges and their transparency:

Service charges around the country can be substantial [ … ] It is fair to say that the lessees who come to us, of course, are not coming to say, “My service charges are fine, and I am very happy with my landlord.” The amounts range from the relatively small to the large [ … ] Very often it is about sheer scale, but it is also about problems of clarity [ … ] What is apparent is that there is a lot of range between landlords—private and social sector—when it comes to how they deal with their lessees. Some are decent at engagement—I do not think there is anybody who is excellent—and there are others who are poor, for various reasons.252

250 Ministry of Housing, Communities and Local Government (LHR0548), para 43
251 Leasehold Advisory Service (LHR0503), para 3, and National Leasehold Survey 2016, Leasehold Advisory Service
252 Q309–10 (Anthony Essien, Leasehold Advisory Service)
Transparency and overcharging

150. In 2011, Which? estimated that leaseholders were being overcharged by £700 million a year because of excessive fees and hidden costs contained within their service charges.\textsuperscript{253} Eight years on, and with the leasehold sector more than twice the size than estimated in 2011, it is likely that this figure is even higher today.\textsuperscript{254} Jim Fitzpatrick MP, representing the APPG on Leasehold and Commonhold Reform, told us that too many freeholders and managing agents were using the service charge to extract money from leaseholders, without providing an adequate service in return:

> There has to be a complete rebalancing of the playing field to enfranchise leaseholders and give them greater rights under regulation against unscrupulous property management companies, which are ripping them off through service charges and refurbishment charges. Housing associations are doing exactly the same in the social sector. Private developers and freeholders are [ … ] using leaseholders as a cash cow and not using the service charges they are collecting to maintain the buildings they own because they do not care. They want the money more than they want to keep their leaseholders happy.\textsuperscript{255}

151. Seema Malhotra MP told us about the experiences of her leasehold constituents in Feltham and Heston, and highlighted widespread concerns around the lack of protection from the scale of service charges, insufficient transparency, limited redress when customer service is poor, and inadequate recognition of leaseholder rights to information.\textsuperscript{256} She reported that one leaseholder had been charged £4,000 for parking facilities that did not exist, while another had seen the service charge for communal repairs increase by £2,700, despite the management company never having undertaken such work. These stories corresponded with the evidence we heard directly from leaseholders. One anonymous submission told us that his service charge had increased by 27% every year for the last four years, which was “hammering our investment values and eroding our savings.”\textsuperscript{257} Another said he had been significantly overcharged for buildings insurance:

> For years we were charged in excess of £500 per year EACH for buildings insurance, without any option to obtain more reasonable cover. The managing agents stated that they had no time to “shop around” for better quotes as they manage many properties. When we changed to [Right to Manage\textsuperscript{258}] a little while ago, our buildings insurance went down by three-quarters of what we had been paying, for the same cover and terms, as we were able to request quotes from several suppliers and get competitive cover that costs us in the region of £130pa.\textsuperscript{259}

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\textsuperscript{253} Which? investigates leasehold charges, Which?, 26 October 2011
\textsuperscript{254} The Which? investigation said, “There are 1.8m leasehold properties in the UK and flat owners are losing out to the tune of £700m a year because of excessive fees and hidden costs contained within their service charges”. As outlined in Chapter One, more recent estimates suggest there are between four and six million leasehold properties.
\textsuperscript{255} Q13 (Jim Fitzpatrick MP, APPG on Leasehold and Commonhold Reform)
\textsuperscript{256} Seema Malhotra MP (LHR0670), para 4
\textsuperscript{257} Anonymous (LHR0567)
\textsuperscript{258} Note further information on Right to Manage in paragraph 188
\textsuperscript{259} Anonymous (LHR0279)
152. Specific concerns were raised around large commission fees being paid to the managing agents or freeholders—particularly for buildings insurance—and these being hidden within service charges. Many trade bodies, including RICS, require that managing agents disclose when they are receiving commission, but the Federation of Private Residents’ Associations told us that “even in those cases, it is often well hidden.”\footnote{Federation of Private Residents’ Associations (LHR0311)} They called the practice “immoral and fundamentally wrong”, as commission usually leads to increased charges for leaseholders.\footnote{Q249 (Richard Silva, Long Harbour)} Richard Silva, from Long Harbour, agreed that hidden commission charges should be prohibited.\footnote{Q250 (John Dyer, British Property Federation)} John Dyer, representing the British Property Federation, denied that this was a widespread problem and argued that most managing agents did not take commission.\footnote{Consensus Business Group (LHR0589), section 3(m)} However, Consensus Business Group told us, “it is correct that insurance commissions are earned by freeholders”, and that this was justified for administering the insurance programmes.\footnote{Landlord and Tenant Act 1987, s 42}

153. We have been greatly concerned by reports of leaseholders being overcharged, paying for services they are not receiving, and high commission fees for freeholders and managing agents. The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge. It should be clearly identified where commission has been paid to the managing agent or freeholder and the proportion of the cost this constitutes. This would improve transparency and allow leaseholders to make comparisons with equivalent properties.

Regulation of sinking funds

154. Leaseholders are often required to make regular payments to sinking (or ‘reserve’) funds, which are then used to cover the cost of major works, avoiding the impact of significant one-off bills. They are held on statutory trusts.\footnote{Landlord and Tenant Act 1987, s 42} Legislation was introduced in 2002 to regulate these funds, by specifying that they must be held separately in designated bank accounts and giving leaseholders rights to information. However, these regulations have never been brought into force. However, this has left sinking funds as one of the only spheres in which money held by a third-party is unregulated and unprotected. The Federation of Private Residents’ Associations told us that the lack of regulation had seen fraud and theft from leaseholders’ sinking funds:

It has been suggested that the sums held by unregulated and unprotected third parties may well exceed £1 billion. An individual can set up in business as a property manager without any formal qualifications or experience or insurance—even if they have a criminal background and hold these deposits or other sums. Perhaps unsurprisingly, this has from time to time resulted in leaseholders falling victim to fraud or outright theft of their payments.\footnote{Federation of Private Residents’ Associations (LHR0311)}

155. Several leaseholders reported that the administration of their sinking funds lacked transparency and accused their freeholders and managing agents of unreasonably withdrawing money:
We were shocked to know that our landlord was giving a proportion of our service charge to FirstPort, the service management company. After 8 years of unknowingly paying into a sinking fund, there was only approximately £6,000 in the pot. There were 30 flats paying for 8 years = £6000—it did not make any sense. To date, neither A2Dominion nor FirstPort can or will provide any answers—Mrs Pamela Rose Canales

I paid £2,194.17 [ … ] on top of the circa £27,000 that you had already collected from the sinking fund. Your explanation to how much money was held in the sinking fund before you emptied it for your benefit was that you had changed the way you account for it and the balance would show as £0. This is less than transparent—Anonymous (email to the managing agent)

156. The Minister for Housing and Homelessness told us this was one of the issues being considered by the Regulation of Property Agents Working Group, chaired by Lord Best, which is due to make its report in the summer. She said the Government were keen for this issue to be considered but told us that theft from reserve funds did “not happen that often.”

157. Sinking funds urgently require regulation, to improve transparency for leaseholders and protect their money from less scrupulous freeholders and managing agents. Requiring them to be held separately, as legislated for in 2002, would improve transparency and make it easier to identify the trust funds. The Government should immediately bring into force sections 42A and 42B of the Landlord and Tenant Act 1987 to ensure that leaseholders’ reserve funds are protected.

Estate management fees and the non-adoption of communal areas

158. It is increasingly common for private estates with leasehold houses to be required to contribute to the maintenance of communal areas and facilities—including roads, sewers and street lamps—which have not been adopted by the local authority. Estate management fees, as with service charges, have been criticised for their size, lack of transparency and the difficulty with which they can be challenged. The mere existence of such fees is also controversial. Which? argued that, “On a new-build housing estate, the roads should not be the responsibility of the leaseholder.” The National Leasehold Campaign told us that such fees would “be scandals in future years if not clamped down on now”, while Jo Darbyshire told us that estate management fees were becoming unaffordable for many residents:

You will typically find, on a new-build development, there is some token piece of land, which might be a children’s park or a grassed area, that attracts an estate management charge. Again, consumers have no concept that these are currently unregulated in how much they can go up by. We see

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267 Mrs Pamela Rose Canales (LHR0585)
268 Anonymous (LHR0532)
269 QS40 (Heather Wheeler MP, Minister for Housing and Homelessness)
270 National Leasehold Campaign (LHR0534), para 12
271 Which? (LHR0600)
all the time now from people who post in our group how they are hitting issues of affordability because they had no idea what was going to happen with these costs.272

159. Developers blamed local authorities for being unwilling to adopt communal areas and public services. Jason Honeyman, representing Bellway, told us that local authorities “may not have the skillset” to manage more complicated developments, and did not “want the responsibility of managing it.”273 Instead, it was “easier to push it back to the residents or the developer”, requiring the establishment of residents’ management companies to manage communal areas and services. David Jenkinson, representing Persimmon, agreed that further regulation was required in this area.274 Local authorities, however, denied that they were unwilling, and criticised developers for being too willing to walk away. Gillian Boyle, from Manchester City Council, told us:

I am not sure that local authorities are unwilling. A lot of this comes back to the scheme at the beginning, with planning. Ideally, every square inch of that scheme should have a clear system of management. Whether that is everything goes off in individual freehold plots and the rest of it is adopted highway, that is probably the best solution for housing developments and is really what you should aim for. These common areas are a problem on a lot of estates, and I am dealing with cases at the moment of schemes that were built 10 years ago, of common areas that nobody really wants to manage. Developers want to walk away, and the residents are not clear about the charges for areas.275

160. **There should always be a clear agreement between developers and local authorities before development begins as to the public areas and utilities that are to be adopted by local authorities. These details must be provided to prospective purchasers at the start of the sales process.**

161. Many of these private estates include freehold houses, whose owners are also required to pay estate management fees. However, freeholder owners have limited rights to challenge the level of charges and the standard of service provided, compared to the statutory rights that leaseholders enjoy. Helen Goodman MP introduced a Ten-Minute Rule Bill in November 2018 to address this issue, during which she highlighted the unfairness for freehold house owners:

Unlike leaseholders, who have access to a dedicated ombudsman service, freeholders have no legal recourse in the event of a dispute. Using old law—in particular section 121 of the **Law of Property Act 1925**—the agents can place charges on the property if residents are late with payments. It is an incredibly one-sided contract. Homeowners do not have the power to ask for justification of costs, but the management company can legally send in bailiffs or threaten repossession of the home if a resident does not pay on time.276

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272 National Leasehold Campaign ([LHR0534](https://www.lhr.org.uk/), para 26, and Q64 (Jo Darbyshire, National Leasehold Campaign)
273 Q212 (Jason Honeyman, Bellway)
274 Q213 (David Jenkinson, Persimmon)
275 Q302 (Gillian Boyle, Manchester City Council)
276 HC Deb 14 November 2018 c326
162. In its response to the consultation into *Tackling unfair practices in the leasehold market in December 2017*, the Government committed to "legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed-use estate can access equivalent rights as leaseholders to challenge the reasonableness of service charges."  

Several witnesses supported such legislation, including Amy Simmons, representing the National Housing Federation, who said it was "really important" that where freeholders are obliged to pay for the upkeep of specific areas, they should have the same rights as leaseholders, so that they are protected and have redress.

163. **The Government is right to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities should have the same rights as leaseholders to contest the fairness of those fees. As we have recommended for service charges, such fees should be provided to residents on a standardised form, which clearly identifies the individual parts that make up the overall charge.**

**One-off bills for major works**

164. Large one-off bills for major works can be a source of great distress for leaseholders. We had seen this in the context of our work into building regulations and fire safety, where many leaseholders have been sent bills of tens of thousands of pounds to pay for the removal and replacement of potentially dangerous combustible cladding from their buildings. And we saw it again in this inquiry, where leaseholders wrote to us about the large one-off bills they had been sent, and wanted to highlight the lack of a cap on such charges, excessive management fees, insufficient transparency, limited consultation with freeholders and managing agents, and difficulties in disputing the charges. These are just some of the submissions we received:

We have all just been told [we] will be charged almost £2,000 to repaint our building and almost £5,000 will be their fee for administering the works! How can they justify that amount of money when they already get paid a lot of money and nothing ever gets done? Most people in our building have raised the issue that they are not willing to pay, however these people will get away with it. How do we have that kind of money? — Miss Rachel Thomas

There were cyclical works. Suddenly it became major works. Freeholder did not listen to leaseholder [objections] and pushed works anyway […] As a result [of the] unprofessional approach of management, the costs of work increased from £79,000 to £600,000 in total. Each leaseholder to pay approximately £50,000 […] Now I have an extra £450 a month to pay on top of my mortgage monthly. This has caused great distress now as is unaffordable to live in my own home — Jay Beeharry and Nina Rautio

On a small 25-year-old three-storey building with no structural issues the residents were quoted major works costs totalling nearly £250,000 (the

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277 *Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response*, Department for Communities and Local Government, December 2017, para 80

278 Q307 (Amy Simmons, National Housing Federation)

279 *Independent review of building regulations and fire safety: next steps*, Housing, Communities and Local Government Committee, July 2018

280 Miss Rachel Thomas (LHR0373)

281 Jay Beeharry and Nina Rautio (LHR0704)
previous cyclical cost was £29,000). This represents an 800% increase in costs and includes more than £26,000 in management fees. The leaseholders were alarmed and distressed when they received the Notice of Intention and Notice of Estimates to carry out major works and immediately questioned the validity of many of the items listed as requiring attention, particularly because in previous years all the works required had previously been met from the funds available in the sink fund—Barry Gardiner MP.

165. We heard that high one-off bills were a concern for leaseholders in both the social sector and private sector, although it was concerning that the Minister for Housing and Homelessness told us that she had “not seen that evidence” and suggested the problem might be “a London thing”, even if she had not personally received any correspondence about it as a constituency MP.

166. Many local authorities do not operate a sinking fund for each building, while public procurement regulations mean that leaseholders in the social sector often do not get the best value for major works. The extensive use of Qualifying Long-Term Agreements (QLTAs)—long-term exclusivity contracts with particular contractors—reduces the freeholder’s consultation requirements and limits the ability of leaseholders to nominate alternative contractors. Local authorities did not deny that public procurement rules made one-off bills for major works more expensive for leaseholders, with Gillian Boyle from Manchester City Council suggesting it could be 10 to 20% more expensive than would be the case in the private sector:

> It just costs more, because you have to go through a tender process and you have to go through the [Official Journal of the European Union] process. You end up with frameworks where you do not always get, perhaps, as good value as if you can just appoint a particular contractor who you know is going to do a good job, if you are a private organisation. We have done commercial schemes and I know for a fact that if I was a profit organisation, I would probably get that 10% to 20% cheaper. There is a cost in public procurement.

Larissa Reed, representing Brighton and Hove City Council, agreed, telling us that local authorities had additional duties, including the need to “ensure that people have a track record of delivery [... ] and that costs money”.

167. The Commonhold and Leasehold Reform Act 2002 requires that leaseholders be consulted before the freeholder carries out qualifying works or enters into a QLTA. However, with leaseholders often in a minority in the social sector—particularly those in ‘right to buy’ properties—consultation is often perceived to be limited. If works are to be undertaken under a QLTA, the freeholder must give written notice, invite observations and have regard to any observations, but are not required to amend their proposals. The Brighton and Hove Housing Coalition, representing council leaseholders in that local
authority, told us that the statutory notices for a Qualifying Long-Term Agreement did not allow for real consultation because the time period of 30 days was too short and there was no requirement on the freeholder to state final costs at the consultation stage, only estimates. Larissa Reed said that council leaseholders were consulted about major works, not simply notified, but that local authorities also had a duty to consider the needs of social tenants in the same buildings: “We do need to balance that, however, with the needs of the tenants, who also want these works to be done.”

168. Concerns over one-off charges for council leaseholders are not new. In 2013, the family of 93-year-old Florence Bourne reported she had “died of shame” after being unable to pay a £50,000 bill for roof repairs sent to her by Newham Council. It later emerged the roof could have lasted another 40 years, and the work was unnecessary. The case led to the Government introducing the Social landlords reduction of service charges: mandatory and discretionary directions 2014—commonly referred to as ‘Florrie’s Law’—which capped the amount local authority leaseholders would be required to pay for repairs to £10,000 (or £15,000 in London) over a five-year period. However, the cap was limited in scope and only applied where repairs are funded by a central government grant. Barry Gardiner MP highlighted that Florrie’s Law could be circumvented by, for example, “fixing a leaking roof at a different time to conducting repair works”. When asked whether the cap should be strengthened, Larissa Reed said:

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

169. High one-off bills for major works can be greatly distressing for leaseholders. Florrie’s Law was introduced to protect council leaseholders from high one-off bills, but it has too many exemptions.

170. Further, high bills are not only a concern in the social sector. We have received evidence from several leaseholders in the private sector who have been made to pay high one-off bills for major works. We recommend that the Government implement a new consultation process for leaseholders in privately-owned buildings affected by major works. A threshold of £10,000 per leaseholder should be established above which major works should only proceed with the explicit consent of a majority of leaseholders in the building. If no agreement can be reached with leaseholders, freeholders should only be able to proceed with major works subject to the authorisation of a tribunal, which would determine whether the works are both essential and represent value for money. If works are deemed to be inessential or unreasonably expensive—for example,
due to excessive management fees—they should not be allowed to proceed. Where such works do proceed, the freeholder should be obliged to offer a low-interest, long-term loan to affected leaseholders. The threshold should apply regardless of whether funding is provided by central government and should apply to the cumulative costs of all major works within a five-year period.

171. These proposals would rebalance power towards leaseholders, ensuring transparent and meaningful consultation over major works, pressure to keep costs low, and the explicit consent of those who ultimately have to pay the bill. They would also ensure that leaseholders are not able to block essential works unnecessarily. Further, this would also likely create a strong incentive for freeholders to manage sinking funds more effectively.

172. The Government should introduce a Code of Practice for local authorities and housing associations, outlining their responsibilities to leaseholders in social housing blocks and offering guidance on best practice for major works. Local authorities should be required to provide evidence to leaseholders that they are receiving the same value from procurement practices in the public sector as they might reasonably expect in the private sector, and that public procurement rules are not used as an excuse for overcharging. Further, as is common in the private sector, local authorities should also be required to administer sinking funds for each of the buildings or estates they are responsible for, so leaseholders are less at risk of unexpected bills for major works.

Dispute resolution

173. Leaseholders are able to challenge their freeholders through the tribunal system. The use of the tribunal system was intended to give leaseholders access to a fast and affordable means of seeking redress. However, leaseholders are often reluctant to go down this route. Leaseholders wrote to us to highlight their concerns around an imbalance of power in the tribunal process, legal costs being passed to leaseholders even when they win, and the fear that challenging their freeholder through the tribunal process might lead to the forfeiture of their properties.

Imbalance of power

174. While the tribunal system was initially intended to be a low-cost mechanism for leaseholders, we heard that it regularly sees lawyers appearing on behalf of freeholders and managing agents. Jim Fitzpatrick MP told us that the playing field was not level for ordinary leaseholders:

[ … ] what is happening is that leaseholders are turning up on a number of instances to represent themselves [ … ] Freeholders are turning up with barristers, even QCs, and because of their knowledge of law and legal procedures they are running rings round ordinary people who are just taking a concern to a lower-tier tribunal, hoping they can get some sense of balance and fairness through the informal procedure. The playing field just is not level.
175. Shula Rich of the Federation of Private Residents’ Associations said she had attended many tribunals alongside leaseholders. She reported that, where there is a litigant in person up against a barrister—with a comprehensive understanding of legal precedents—it was much easier for the Tribunal to side with the barrister than “to wonder whether the litigant in person might or might not be right.” Barry Gardiner MP described such practices as an “abuse” that “needs to be stopped.” Indeed, Taylor Wimpey told us that the tribunal process was long, complex and expensive, and “unduly weighted towards the freeholder” who has the “expertise to use the complex system to their advantage”. They called on the Government to review the operation of the tribunal system in this context, with the aim of “speeding up the process and rebalancing it to remove the apparent bias to freeholders.”

176. Jo Darbyshire from the National Leasehold Campaign highlighted what she described as a “David and Goliath fight” between freeholders and leaseholders. She said freeholders had been known to use the tribunal system to weaken opposition from leaseholders over time:

> We are aware of cases where people will take a freeholder to tribunal. They may win. That will then be appealed, so they have to go to appeal. It is six months of their life [...] The next year, they will be challenged again. Some of the people we know have seen cases where the freeholder does it year after year, and they do it on purpose because they know that, eventually, the leaseholder will just go, “Do you know what? It is just easier to pay”.

In an example of the imbalance of power inherent in the system, one of our witnesses, Larissa Reed, was criticised by the Brighton and Hove Housing Coalition for allegedly saying that, when Brighton and Hove City Council are taken to a tribunal by leaseholders, “they always win”. When asked whether this was a sign of a healthy system, Ms Reed told us that tribunals were only used “as an absolutely last resort”—and that the healthiness of the system was demonstrated in that 90% of the disputes had not gone to a tribunal.

**Legal costs**

177. While the tribunal system was designed to be a cost-free jurisdiction, in practice it can be very expensive for leaseholders to challenge high service charges and one-off bills. Leaseholder Agnes Kory wrote to us about her experience of the tribunal system, which left her with a £40,000 legal bill:

> For many years I have been asking for (and have been refused) break-down of charges demanded. Having refused to pay unidentified sums, recently I was taken to the First-tier Tribunal which did not mind that management did not provide full breakdown of charges. The First-tier Tribunal ruled that it was unreasonable of me to ask for full breakdown of charges. The First-tier Tribunal allowed management’s barrister to practically run the hearing and disallowed my own evidence and that of my surveyor (although

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295 Q92 (Shula Rich, Federation of Private Residents’ Associations)
296 Barry Gardiner MP (LHR0470)
297 Taylor Wimpey (LHR0400)
298 Q90 (Jo Darbyshire, National Leasehold Campaign)
299 Brighton and Hove Housing Coalition (LHR0689)
300 Q301 (Larissa Reed, Brighton and Hove City Council)
he was instructed by the First-tier Tribunal to attend!). The argument was about £5,000 but management's legal team now demands another £40,000 for their costs. This is eight times more than the disputed amount and four times more than my annual income.\(^{301}\)

178. Further, we heard that freeholders were able to recover their legal costs through the service charge, even when they lose. Amanda Gourlay, a barrister specialising in leasehold law, expressed her view that, “in the interests of access to justice, one party should not be required to run the risk of paying the other’s costs with no prospect of recovering their own.”\(^{302}\) However, housing lawyer Giles Peaker, told us that this practice was increasingly commonplace, and that freeholders were routinely recovering their costs, either under the service charge or under an administration charge.\(^{303}\) He explained that it would be possible for the leaseholder to apply for a ‘Section 20C’ order\(^{304}\) to stop the freeholder from recovering tribunal costs in this way, but that the burden lay with the often-unrepresented leaseholder. Mr Peaker argued that the default position should be the other way around; that the freeholder, rather than the leaseholder, should have to make an application to seek a reallocation of costs. Jim Fitzpatrick MP highlighted the case of leaseholders in his constituency who had been made to pay their freeholder’s legal costs:

I had leaseholders in one of my private blocks. They were very nice properties with very professional people. I suspect most of the flats were around about £1 million and some up to £3 million. They took the freeholder to court, won at first-tier tribunal, won at second-tier tribunal and found the legal costs on their service charges the next year. They want back to the tribunal and said, “This cannot be right. We won both cases and he is charging us for his legal fees”. The answer was that it was a legitimate business expense incurred as a result of his responsibilities as a freeholder, so he is entitled to charge you for the privilege of beating him.\(^{305}\)

179. **Leaseholders should not be required to run the risk of paying their freeholder’s legal costs, even if they win. The Government must legislate to require that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case, unless the leaseholder has behaved unreasonably.** This would go some way towards alleviating the risks to leaseholders in bringing service charge or other challenges to tribunal.

### Forfeiture

180. A freeholder may seek the forfeiture of a lease where they deem that the leaseholder is in breach of their lease agreement. This is usually\(^{306}\) initiated by the service of a notice under section 146 of the Law of Property Act 1925. Parliament has intervened to make it more difficult for a freeholder to successfully forfeit a lease, including in the Housing Act 1996 (which prohibited the serving of a section 146 notice based on arrears in service charges unless there has been a determination of the amount of service charge a leaseholder

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301 Agnes Kory (LHR0666)
302 Amanda Gourlay (LHR0448)
303 Q423 (Giles Peaker)
304 An order under section 20C of the Landlord and Tenant Act 1985
305 Q43 (Jim Fitzpatrick MP, APPG on Leasehold and Commonhold Reform)
306 There are cases in which a section 146 notice isn’t required, notably for non-payment of rent. There are other restrictions on forfeiture for non-payment of rent.
must pay) and the Commonhold and Leasehold Reform Act 2002 (which prohibited the serving of a section 146 notice for breach of covenant, unless a determination has been made).

181. However, we heard that freeholders and managing agents were increasingly reliant on forfeiture clauses in leases in order to recover alleged arrears of payments from leaseholders.\textsuperscript{307} Giles Peaker told us there was “this pressure to use forfeiture as a first resort”, but noted that there were no other mechanisms for a landlord to address breaches of a lease, and it was very rare for freeholders to actually achieve a forfeiture.\textsuperscript{308} Amanda Gourlay highlighted that there can be a significant and disproportionate difference between the level of legal fees incurred and the seriousness of the issue and, combined with the threat of forfeiture, the effect “has been to confer on landlords an all but unassailable position of strength in relation to the costs of litigation”.\textsuperscript{309} With the risk of losing a property, Ms Gourlay highlighted that, “The financial risks of defending a claim to £1,000 of ground rent arrears are likely to be disproportionate to the amount of money at stake”. Similarly, Shula Rich told us it was in the freeholder’s interest “just to threaten forfeiture, so that the costs can be fixed right from the beginning on the lessee, who has only chosen to ask for justification or explanation of the service charges.”\textsuperscript{310}

182. Several leaseholders told us that they had been threatened with forfeiture unless they paid what was demanded by their freeholder. Some of the more egregious examples we heard about are summarised below:

\begin{quote}
[ … ] we went through a harrowing process of being asked for around £30k with the threat of ‘forfeiture’ of the property [ … ] More threats of costs and forfeiture followed and only my single minded pursuit of the belief that this is an injustice is pushing us forward [ … ] Through this entire process our ultimate aim is to avoid forfeiture of a lease worth approximately £850,000 and simply to have a clear and modern equitable lease—\textit{Major Nathan Jones}\textsuperscript{311}

[The freeholder] demanded we pay him £50,000 to amend and update the floorplan on the lease. We offered £10,000 so as not to lose our buyer even though we had done nothing wrong—but he refused [ … ] He threatened us with forfeiture and verbally threatened my mild-mannered husband by telling us if we did not pay up that things would get worse and worse for us. We were being threatened with forfeiture and felt he was trying to extort money from us whilst blocking our sale—\textit{Mrs Anne Heelan}\textsuperscript{312}

We have also heard of a landlord who has charged a £181 penalty to an incoming leaseholder because notice was served on their agent and not the landlord themselves [ … ] They are threatening Section 146, forfeiture proceedings unless the sum of £863.00 was paid within 14 days. Of that £863.00, only £250.00 was outstanding ground rent which is less than the de minimis amount for which the s.146 proceedings could be taken [ … ] The
\end{quote}

\textsuperscript{307} Amanda Gourlay (LHR0448)  
\textsuperscript{308} Q420 (Giles Peaker)  
\textsuperscript{309} Amanda Gourlay (LHR0448)  
\textsuperscript{310} Q90 (Shula Rich, Federation of Private Residents’ Associations)  
\textsuperscript{311} Major Nathan Jones (LHR0272)  
\textsuperscript{312} Mrs Anne Heelan (LHR0393)
leaseholder impacted preferred to pay than the risk an ongoing issue with a landlord who she would have to interact with for many years to come—Conveyancing Association.\(^{313}\)

183. Guy Fetherstonhaugh QC described forfeiture as “fantastically draconian.”\(^{314}\) While the threat of forfeiture usually leads to compliance by the tenant, it can in extreme cases lead to the tenant losing their asset and the landlord gaining a ‘windfall’. As noted by Amanda Gourlay, there is no obligation to account to the leaseholder for any proceeds of the forfeiture; the leaseholder simply loses their property. Jim Fitzpatrick MP highlighted how this threat had influenced the thinking of leaseholders in his constituency, who had received bills for the replacement of cladding on their buildings and been threatened with forfeiture if they did not pay:

> Many of these are young professionals. They are mortgaged up to the hilt. They could not borrow any more money from their lender if they wanted to, because they just do not have the wherewithal. They are now facing bills of thousands of pounds for this cladding work. They are exposed because, if they do not meet the freeholder’s terms, their homes are vulnerable. For £5,000, £10,000 or £20,000—whatever the costs are—they could lose their £400,000 or £500,000 flat. They do not have protection under law, because forfeiture gives the power to the freeholder or the developer.\(^{315}\)

184. Calls for reform of forfeiture legislation are not new. The Law Commission first proposed a system of discretionary court orders, in place of forfeiture, in 1985.\(^{316}\) In 2006, the Law Commission again proposed giving courts the power to choose from a range of orders including: terminating the tenancy, making the tenant remedy the breach, selling the tenancy, payment of money, and/or transferring the tenancy, suggested the choice be guided by proportionality.\(^{317}\) It also supplied a draft Bill. However, the Government did not respond to the Law Commission’s proposals in 2006 and the legislation has remained unaltered since the Commonhold and Leasehold Reform Act 2002.

185. While the threat of forfeiture puts freeholders in a near unassailable position of strength in disputes with their leaseholders, freeholders do require an alternative, less draconian, mechanism for ensuring compliance with the lease. The Government should immediately take up the Law Commission’s 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.

**New routes to redress and control for leaseholders**

186. Redress mechanisms for social sector leaseholders are more well-established. In particular, the Housing Ombudsman Service considers complaints regarding registered

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\(^{313}\) Conveyancing Association (LHR0390), para 5(vi)

\(^{314}\) Q421 (Guy Fetherstonhaugh QC)

\(^{315}\) Q44 (Jim Fitzpatrick MP, APPG on Leasehold and Commonhold Reform)

\(^{316}\) Codification of the Law of Landlord and Tenant: Forfeiture of Tenancies, Law Commission, 21 March 1985

\(^{317}\) Termination of Tenancies for Tenant Default, Law Commission, 2006, CM 6946
providers of social housing, including from leaseholders in social housing blocks. This access was noted by Amy Simmons, from the National Housing Federation, as one of the main advantages for social sector leaseholders over those in the private sector:

The major difference, for our members, is the level of redress that those leaseholders have. If you are a leaseholder of one of our members, a social housing provider, if you are not happy with the way that your home is being managed or the relationship that you have with the freeholder, you can go through the housing association complaints mechanism, and you can seek redress through the Housing Ombudsman [ … ] Not all those levels of redress are open to the private sector.

However, we heard that action was urgently needed to give leaseholders in the private sector greater control over the service charges and one-off bills they receive, as well as improve the routes to redress for leaseholders to challenge such charges. The Government has made several proposals which, if urgently and adeptly implemented, have the potential to address some of these concerns for existing leaseholders.

The Government asked the Law Commission to undertake an assessment of the right to manage (RTM) legislation. The RTM was introduced by the Commonhold and Leasehold Reform Act 2002 and is a right granted to leaseholders to take over the freeholder’s management functions through a company set up for this purpose. However, relatively few flats or housing estates have formed their own RTM organisations and, as noted by the National Leasehold Campaign, there have been particular difficulties where the property owners do not reside at the property, and nervousness from leaseholders to take on the responsibility of becoming an RTM director. The Law Commission also noted the overly technical and rigid process for leaseholders to follow when making a claim to acquire the right to manage, as well as inflexible eligibility conditions and difficulties managing shared access roads and gardens used by other properties on an estate. The consultation period for the Law Commission’s programme of work on RTM will remain open until April 2019. Richard Silva, representing Long Harbour, supported the work being undertaken by the Law Commission and noted that RTM was “a kind of bridge between the leasehold/freehold structure and commonhold.”

The Government has also brought forward proposals to strengthen the right of residents’ associations to be ‘recognised’ and, so, have a formal voice in consultations over major works and other management processes. In its response to the consultation on Recognising residents’ associations, and their power to request information about tenants, the Government noted that some leaseholders have faced significant barriers in establishing recognised tenants’ associations (RTAs) and promised to introduce secondary legislation

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318 Home ownership, Housing Ombudsman Service: “This means that as well as considering complaints from tenants, we can also consider complaints from leaseholders and shared owners. The only category of home owners who are not eligible to bring a complaint to the Ombudsman are those who own the freehold of their home.”

319 Q270 (Amy Simmons, National Housing Federation)

320 Ministry of Housing, Communities and Local Government (LHR0548), para 9

321 As described by the Law Commission (LHR0672), para 1.50

322 National Leasehold Campaign (LHR0534), para 12

323 Law Commission (LHR0672), para 1.51

324 Right to Manage, Law Commission

325 Q221 (Richard Silva, Long Harbour)
to address this. Sir Peter Bottomley MP expressed his view that “the only reason to avoid recognising a tenants’ […] association is because you are taking money you should not be taking.”

190. The Government told us it was moving forward with its proposals to regulate managing agents, including a single, mandatory and legally-enforceable Code of Practice to set minimum standards for the sector. Several organisations told us that these proposals could be key to reform of the sector, but were concerned that the Government had been slow to implement them. The British Property Federation noted that, since the initial consultations, “no further progress has been made”, while the Ground Rents Income Fund highlighted “the lack of action with regard to the regulation of managing agents, which, if carried out correctly, would address many of the problems faced by consumers.”

191. Further Government announcements that could lead to improved legal protections for leaseholders include: proposals for a new Specialist Housing Court, which this Committee supported in our 2018 report into the Private Rented Sector and for which the Government launched a call for evidence in November 2018;330 a new Housing Complaints Resolution Service, to provide a single point of access to resolve complaints for housing consumers, announced in January 2019;331 and proposals for a New Homes Ombudsman, to support homebuyers facing problems with their newly built home, unveiled in October 2018.

192. We welcome the Government’s strong focus on improving regulation and routes of redress in the housing sector and note it has made multiple announcements over the past 12 months on a variety of proposals. However, we urge the Government to implement these measures with urgency, and to do so with a clear and joined-up approach that acknowledges how each of these mechanisms might work together, in particular with a Specialist Housing Court and the Housing Ombudsman Service, to provide a coherent route to redress for leaseholders.

**Freeholders’ Code of Conduct**

193. Further to the work being undertaken by the Government on redress, freeholders were keen to promote a draft Code of Conduct they had drafted alongside specialist property law firm, Winckworth Sherwood, to address concerns around unfair practices in the sector. The British Property Federation told the Committee:

> The industry would welcome the introduction of a code of conduct which covers the construction of ground rents and on-going management of the relationship between the homeowner and ground rent investors. A code could have a significant role to play in not only helping

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326 Ministry of Housing, Communities and Local Government *(LHR0548)*, para 14
327 Q40 (Sir Peter Bottomley MP, APPG on Leasehold and Commonhold Reform)
328 Ministry of Housing, Communities and Local Government *(LHR0548)*, paras 17–24
329 British Property Federation *(LHR0553)*, para 12, and Ground Rents Income Fund *(LHR0598)*
330 Private Rented Sector, Housing, Communities and Local Government Committee, April 2018, para 35, and Considering the case for a Housing Court: call for evidence, Ministry for Housing, Communities and Local Government, 13 November 2018
331 James Brokenshire announces overhaul of broken housing complaints system, Ministry for Housing, Communities and Local Government, 24 January 2019
332 Government announces new housing measures, Ministry for Housing, Communities and Local Government, 1 October 2018
333 For example, Letter from Richard Silva (Executive Director, Long Harbour), 11 January 2019
to safeguard purchasers of leasehold properties, but also help drive good practice within the industry and highlight those not operating to the required standard.\textsuperscript{334}

194. The Ground Rents Income Fund argued that a code would seek to enshrine good practice and responsible stewardship of residential leasehold property. They noted that regulation in this area is largely absent, and “we recognise that self-regulation by itself has not been sufficient”.\textsuperscript{335} Long Harbour said a code would: guarantee responsible conduct in the sector, raise standards across the sector, drive out bad practices, and ensure fairness for residents in the leasehold system.\textsuperscript{336} They explained that a code would “incorporate a Freehold Investment and Management Charter and be based on the adoption of guiding principles: Fairness; Accountability; Integrity; Transparency and Helpfulness”.

195. The Federation of Private Residents Associations noted that there were trade bodies in the sector that have implemented codes of practice and membership schemes, but argued that they “lack any real sanction on their members” as participation in the scheme is normally optional.\textsuperscript{337} There was, they said, “no legal barrier to anyone, however disreputable, setting up in the sector.”

196. \textit{The Committee supports the proactive approach of freeholders in devising a code of conduct and urges the Government to review the case for mandatory regulation of the freehold sector, overseen by an ombudsman, with redress and sanctions where appropriate.}

\textbf{Leasehold Advisory Service (LEASE)}

197. The Leasehold Advisory Service (LEASE) is an executive non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government. It is governed by a board, appointed as individuals by the Secretary of State. LEASE was set up in 1994 to provide free information, initial advice and guidance—defined as the provision of outline, summary, legal advice enabling leaseholders to make informed decisions—to members of the public about residential leasehold and park homes law.\textsuperscript{338} Several written submissions raised concerns about the work of LEASE, including the APPG on Leasehold and Commonhold Reform, which highlighted “a plethora of problems” and called for the “reform or replacement” of the organisation.\textsuperscript{339}

198. We heard mixed views regarding the quality of the service provided by LEASE. One anonymous leaseholder reported that LEASE was “wonderful—and I could not have survived the past 18 years without it”, although they criticised the length of time it took to arrange an appointment with an advisor.\textsuperscript{340} Sir Peter Bottomley MP, representing the APPG on Leasehold and Commonhold Reform, expressed his view that, “Many of the people working in LEASE, answering the phone calls, and their lawyers give the best advice they can.”\textsuperscript{341} However, other leaseholders were far more critical of the service.

\begin{thebibliography}{99}
\bibitem{334} British Property Federation (LHR0553, para 17)
\bibitem{335} Ground Rents Income Fund (LHR0598)
\bibitem{336} Long Harbour (LHR0593)
\bibitem{337} Federation of Private Residents’ Associations (LHR0311)
\bibitem{338} Leasehold Advisory Service (LHR0503)
\bibitem{339} All Party Parliamentary Group on Leasehold and Commonhold Reform (LHR0668)
\bibitem{340} Anonymous (LHR0221)
\bibitem{341} Q50 (Sir Peter Bottomley MP, APPG on Leasehold and Commonhold Reform)
\end{thebibliography}
Katie Kendrick, from the National Leasehold Campaign, told us that, the feedback she had received from leaseholders was that “the help they have received is, honestly, quite appalling.” Anthony Essien, the Chief Executive of LEASE, said that if anybody said they were dissatisfied with the service provided, this would “concern me gravely”.

Jo Darbyshire warned that LEASE had a “huge credibility problem among leaseholders” due to the commercial operations it had previously undertaken. Witnesses highlighted past conferences hosted by LEASE for freeholders, which we were told included seminars on how to draft leases to maximise the income for freeholders and inflate insurance commissions. Mr Essien informed us that, since 2017, such commercial work had come to an end and “our focus is now completely on leaseholders.”

LEASE was also criticised for its lack of leaseholder representation at board level. Ms Darbyshire expressed her view that change at LEASE needed to start at the top, and “you could not make a better statement than to appoint a leaseholder and people who have experience as leaseholders in some of the senior roles there.” Mr Essien explained that all public appointments were outside of his control, but emphasised that he would be happy to work with any board member. The Minister for Housing and Homelessness informed us that she would be appointing people to the board of LEASE within the next six months and would bear these requests in mind.

We are concerned that the only government-funded service for leaseholders continues to have such a poor reputation among many leaseholders. The Government should undertake a comprehensive review of the Leasehold Advisory Service (LEASE), with a focus on maximising the service provided to leaseholders. The Government must, as a matter of urgency, appoint representatives of leaseholders to the board of LEASE, to ensure their voices are fully reflected in strategic discussions.

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342 [Q82](Katie Kendrick, National Leasehold Campaign)
343 [Q323](Anthony Essien, Leasehold Advisory Service)
344 [Q82](Jo Darbyshire, National Leasehold Campaign)
345 National Leasehold Campaign (LHR0534), para 36, and [Q50](Sir Peter Bottomley MP, APPG on Leasehold and Commonhold Reform)
346 [Q327](Anthony Essien, Leasehold Advisory Service)
347 [Q82](Jo Darbyshire, National Leasehold Campaign)
348 [Q325](Anthony Essien, Leasehold Advisory Service)
349 [Q587](Heather Wheeler MP, Minister for Housing and Homelessness)
5 Enfranchisement

202. The Law Commission published its 568-page consultation paper into leasehold enfranchisement in September 2018 and a final report is due to be published later in 2019.\(^\text{350}\) Our report does not seek to replicate the Commission’s comprehensive and important work. Instead, this chapter reflects the evidence we have received from leaseholders, freeholders and others regarding the broad principles for how a future enfranchisement process should operate. In particular, we consider what more might be done for those leaseholders who are unlikely to ever be able to afford to enfranchise, whether or not it is made less expensive. We also reflect on how the difference between the statutory and informal routes to enfranchisement are understood, and whether greater clarity is needed in this respect. Several National Trust leaseholders wrote to us about the difficulties they have owning a leasehold property on inalienable land, in particular the limited rights they have to enfranchise or extend their leases. Finally, this chapter reflects on the evidence we heard that, while the Law Commission’s programme of work is welcome, a wider and more comprehensive review of leasehold legislation is required.

Cost of enfranchisement

203. Leaseholders informed us that the current enfranchisement and lease extension process is costly, complex, lacked consistency and is characterised, as in other areas, by leaseholders feeling they are unable to challenge the freeholder’s demands. We heard from many who told us they were unable to afford the high costs they had been quoted for extending their leases:

I have 52 years left on my lease at the moment […] Without 75 years on the lease I am unable to re-mortgage or sell the property. I therefore have no access to the equity. I am trapped by this. I would have to borrow money to obtain a lease. The last figure quoted was £18,000 with £900 costs just to start the process. I am 70 years old and no one would lend that amount of money as I still have a small mortgage left to pay […] I explained this to the property company who then quoted a lower figure but with a ground rent of £461 pounds. At the moment I pay £15 annually. My property is worth about £110,000 at best—Anonymous\(^\text{351}\)

My valuations, based on the present lease basis—doubling ground rent every 10 years for 50 years—[the surveyor] has suggested that the premium the freeholder ‘could’ ask is £57,000, but said he would argue £11,250 as being fair as a staring offer. On top of this, I have to pay ALL costs (the surveyor says his fees would be 20% of any amount he saves under £57,000), and that I should anticipate around £15,000 for all fees—including those of the freeholder. As things stand, my property is blighted, and cannot be sold to anyone other than a cash buyer—Mr Paul Horwitz\(^\text{352}\)

I was a first-time buyer […] I have lost thousands of pounds in solicitor fees from trying to sell and buy another property. I have also had to pay solicitor fees for trying to vary the [doubling ground rent] lease with the management

350 Leasehold home ownership: buying your freehold or extending your lease, Law Commission, 20 September 2018
351 Anonymous (LHR0041)
352 Mr Paul Horwitz (LHR0270)
company on behalf of the freeholder, who has told me they will not do this. I would have to extend the lease. They told me that to extend the lease their opening offer is £96,000 for a property now valued at £130,000. I do not have this amount of money—Mr Jared Morgan

204. The current valuation process for enfranchisement is highly complex and depends on several factors, including the rateable value of the house at different dates—which is not always possible to obtain—the ground rent, the number of years left on the lease and the current value of the house. Valuations are carried out by qualified chartered surveyors. Marriage value—the additional value there is in owning both the freehold and leasehold interests—is payable on leases with fewer than 80 years left to run, split equally between the freeholder and leaseholder. A 2016 Upper Tier Tribunal decision and subsequent Court of Appeal ruling, Mundy vs The Trustees of the Sloane Stanley Estate—which concerned the mathematical model used to determine the amount to be paid to extend the lease of a flat—was criticised by Parthenia Research for requiring the use of a methodology likely to increase costs for leaseholders. Sir Peter Bottomley, representing the APPG on Leasehold and Commonhold Reform, said that, as a consequence of the decision, “leaseholders will have to pay a third more to extend their leases, more than the existing understood system, and even that was thought to be too high.”

205. Further, there are two routes a leaseholder can consider when extending their lease: the informal route, where the leaseholder contacts their freeholder to try and negotiate a lease extension; and the statutory route, as set out under the Leasehold Reform Housing and Urban Development Act 1993, which provides a formula that a surveyor uses to calculate the cost of extension. The Law Commission highlighted the informal route as a concern, noting that there could be incentives for leaseholders to agree to voluntary transactions which would expose them to significant risks, such as (in the case of a lease extension) onerous terms in the new, extended lease. Amanda Gourlay, a barrister specialising in leasehold law, told us she would always advise her clients to extend their leases through the statutory route:

I have tended to think that if I am advising a leaseholder—and I can think of one case where I was told by a leaseholder, “The landlord has offered to extend the lease outside the Act”—my response has been, “As a matter of instinct, if Parliament has seen fit to legislate to protect the consumer in this area, my inclination is to suggest that you go with the process that Parliament has suggested, rather than go with something outside the Act”.

206. Shula Rich, representing the Federation of PrivateResidents’ Associations, told us that many leaseholders were unaware there were two routes, and this was not always clear when freeholders made informal offers. Indeed, Katie Kendrick, from the National Leasehold Campaign, highlighted that this lack of clarity had led to some panic from leaseholders:

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353 Mr Jared Morgan (LHR0069)
354 Leasehold and Commonhold Reform, House of Commons Library, 14 December 2018
355 Parthenia Research (LHR0062)
356 Q3 (Sir Peter Bottomley, APPG on Leasehold and Commonhold Reform)
357 Law Commission (LHR0672), para 1.22(5)
358 Q440 (Amanda Gourlay)
All of a sudden, in the last six to 12 months, freeholders are offering a lot of what appear to be attractive freehold purchases. They will contact the leaseholder directly and say, “You can now buy your freehold for £5,000. It is a time-limited offer for three months, and you have three months to accept”. It is creating panic among leaseholders thinking that they have only three months to accept this offer; otherwise, they are going to sell it on to a third party. It is creating such panic among leaseholders that they are now doing these informal freehold purchases directly with their freeholders, thinking that they have to do it because, if they sell them on, it is going to be even more.359

207. The Minister for Housing and Homelessness acknowledged that the lack of clarity and understanding around the statutory process was a concern and noted that it was important to “get the information out there that leaseholders can go to the tribunal and strike a fair price between the leaseholder and the freeholder.”360

208. It is not always clear to leaseholders that there is a statutory route to enfranchisement and lease extensions, and this has led to many accepting worse terms than they might otherwise have been legally entitled to. Freeholders should be required to provide an estimate of the statutory cost of enfranchisement or lease extensions when making an offer through the informal route.

Law Commission consultation

209. In its response to the consultation into Tackling unfair practices in the leasehold market in December 2017, the Government asked the Law Commission to put forward proposals for the reform of enfranchisement legislation as part of its Thirteenth Programme of Law Reform, with a specific instruction to make the process “simpler, easier, quicker and more cost effective, and to examine the options to reduce the price payable by leaseholders to enfranchise”.361 The Government told us that the Law Commission’s enfranchisement consultation, which closed in January, had received over 1,000 responses and that the response would be published later this year.362

210. Freeholders expressed concerns about the proposals that had been put forward by the Law Commission. Consensus Business Group told us they were concerned that the proposed changes were “disproportionate, unnecessary and may result in unintended detrimental consequences to the entire property market”, and that it was important to remember that the premium paid is to compensate for the loss of an asset that has been purchased by the freeholder.363 Long Harbour argued that the Law Commission’s pre-consultation paper included “significant inaccuracies in the analysis of the current approach to valuation, presenting a picture of the market that does not reflect the realities of the market and is verifiably erroneous.”364 The Ground Rents Income Fund warned that any attempt to introduce a fixed capitalisation rate to calculate enfranchisement premiums with no reference to market value or RICS RedBook valuation principles,
would be “completely unfair and would represent an obvious transfer of value from one 
party to another without appropriate compensation”.365 There was, they argued, a need 
to balance the interests of leaseholders with those of the pensioners and savers who have 
invested in freeholds. Others, however, argued that that Law Commission’s proposals 
around valuations had been very good. Parthenia Research, a group of academics involved 
in the Mundy tribunal case, told the Committee they were, “positively encouraged by the 
excellent work of the team at the Law Commission, which has highlighted the absurdity 
of the circularity” of the current valuation methodology.366

211. A specific proposal to make the enfranchisement premium a simple multiple of the 
ground rent was discussed by a number of witnesses, although many concluded that it 
would not be practical. Mick Platt, representing the Wallace Partnership Group, warned 
that “You cannot take something that is, of its nature, complex, and make it simpler 
just for the sake of making it simple.”367 Guy Fetherstonhaugh QC noted that it could 
be “grotesquely unfair”, while housing lawyer, Giles Peaker, also warned that a simple 
multiple was unlikely to work in practice, due to the wide variation in ground rents:

We are already in the situation where you have a huge variation in ground 
rents from literally a peppercorn through to several hundred, and indeed 
in some instances several thousand pounds. Any valuation based on a 
multiplier of the ground rent then produces a huge disparity between 
leaseholders, simply on the happenstance of whatever the ground rent set 
in their lease was. It also produces a huge disparity between different types 
of property. For instance, if you are a leaseholder in a block with terribly 
valuable airspace rights, where somebody can put up a couple of penthouses 
on the top and you can enfranchise for basically the same rate as somebody 
in a two-flat converted house, somebody is getting a huge windfall out of 
that. A set rate is not operable.368

212. **We support the Government in its objective to make it simpler, easier, quicker 
and cheaper for leaseholders to enfranchise.** We agree that costs are too high and the 
process too complex. We support the Law Commission’s detailed analysis of this issue 
and look forward to the outcome of its consultation. **We urge the Law Commission 
to recommend a process that will make enfranchisement substantially cheaper. If this 
represents “an obvious transfer of power from one party to another”, as freeholders 
warned, then that may be a good thing. The Government should implement these changes 
within 12 months, as many leaseholders are waiting to enfranchise under a new system.**

213. **As we have already noted, the Government’s proposal to reduce the premium payable 
to enfranchise is equally justifiable in human rights terms as our recommendation 
to reduce freeholders’ contractual income streams through lower ground rents. If 
the Government is willing to countenance a cheaper process for enfranchisement, it 
should have no objection to removing onerous terms from existing leases either.**

365 Ground Rents Income Fund (LHR0598)
366 Parthenia Research (LHR0062)
367 **Q245** (Mick Platt, Wallace Partnership Group)
368 **Q438** (Guy Fetherstonhaugh QC and Giles Peaker)
Support for low-income leaseholders

214. We were told that, in many cases, regardless of how much cheaper the enfranchisement process becomes, some leaseholders will never be able to afford to enfranchise or extend their leases on their own. This was important to address, not just in terms of fairness—particularly to older people, who may be unable to borrow the money required—but also in ensuring that a two-tier leasehold market does not emerge, with those unable to afford to enfranchise trapped in the leasehold tenure and less able to sell or re-mortgage their properties. Jo Darbyshire, from the National Leasehold Campaign, warned:

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

215. The Minister for Housing and Homelessness did not appear receptive to the idea of providing low-interest finance to support leaseholders in such a position, arguing that she had “not found £2 million down the back of the sofa yet, I am afraid.”

216. While we look forward to the implementation of a reformed enfranchisement process, many leaseholders will struggle to afford to purchase their freeholds at any price. This is a particular concern for house lessees on estates with a mixture of leasehold and freehold tenure, but also where lease terms have affected the saleability and mortgage-ability of properties. The Government should introduce a low-interest loan scheme, so that leaseholders who want to enfranchise or extend their leases—but cannot afford to or obtain the necessary finance—have the opportunity to do so. This could be promoted as a form of Help to Buy for leaseholders.

National Trust leaseholders

217. The National Trust owns more than 250,000 hectares of land and around 25,000 buildings throughout England, Wales and Northern Ireland. There are 5,000 residential properties on National Trust land which are let to tenants, of which 20% are leaseholders. The National Trust explained that this ensures that these buildings are put to good use, that they are looked after and ensures that the Trust receives an income to help pay for their maintenance. 95% of the National Trust’s land is held inalienably—that is, it cannot be sold and only Parliament can authorise its compulsory acquisition. The National Trust can grant residential leases, but not if the length of the term would in practice amount to parting with the land. As such, the National Trust normally limits the length of leases on its inalienable land to 99 years:

We have made decisions on granting leases of inalienable properties in the expectation either that we would get the property back at the end of the fixed term or that within a generation we would have the ability to review

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369 Q86 (Jo Darbyshire, National Leasehold Campaign)
370 Q597 (Heather Wheeler MP, Minister for Housing and Homelessness)
371 National Trust (LHR0463), para 3
the most appropriate use for the property. We hold these properties for the
benefit of the nation and they have often been gifted to us, or funded by
people who have given us money in that expectation. For the time being
the best way of achieving that purpose has been to allow someone to live in
such properties, which has the additional advantage of giving them a fully
productive use.372

218. We heard from several National Trust leaseholders who had not been able to
enfranchise or extend their leases. Under the terms of the existing Leasehold Reform Act
1967, National Trust leaseholders are entitled to a single statutory 50-year lease extension
that is subject to a review of ground rent at the start of the 50-year term. Once the statutory
lease extension has been taken up there is no possibility of obtaining another 50-year lease
extension and the only remaining course of action is to apply to the National Trust for a
shorter voluntary lease extension that may or may not be granted. Mr Kevin Walker told
us that, the effect of this process was to “render our homes unsaleable in the long term and
the significant investments in improvements we have made are valueless.”373

219. The Tenants Association National Trust (TANT) told the Committee that exemptions
for the National Trust within the Leasehold Reform Act 1967 meant that National Trust
leaseholders “are denied enfranchisement and lease extensions”:

The creation of inalienable status has removed forever access to Freehold
and left tenants at the mercy of the Statutory Extension loophole provided
in the 1967 Act intended for tenants not choosing to exercise their freehold
rights [...]. The issuing of Statutory Extensions leaves all National Trust
tenants fearful of the Trust’s legal right to reclaim the ground (and what is
on it) at the end of the Statutory Extension 50-year period.374

They noted that the use of a statutory extension left tenants reliant upon the goodwill
of the National Trust as to whether they would be willing to grant them a subsequent
‘voluntary extension’, which they would not be legally obliged to do.375

220. The Minister for Housing and Homelessness told us it would be very difficult for
the Government to amend the Leasehold Reform Act 1967 in order to give National
Trust leaseholders more rights, and did not see how this would be possible in the short
term.376 In its enfranchisement consultation paper, the Law Commission proposed three
options for National Trust properties: that they continue to be excluded from statutory
enfranchisement rights, be subject to enfranchisement claims in the same way as any other
property, or be subject to more limited enfranchisement rights than other properties.377

221. The National Trust told us they were very concerned by these proposals and said they
could see properties being lost to the nation, including significant grade I listed historic
properties, such as 16th and 18th century mansions, with associated parkland:

372 National Trust (LHR0463), para 12
373 Mr Kelvin Walker (LHR0328)
374 Tenants Association National Trust (LHR0481), para 1
375 Tenants Association National Trust (LHR0129)
376 Q611 (Heather Wheeler MP, Minister for Housing and Homelessness)
377 Leasehold home ownership: buying your freehold or extending your lease, Law Commission, 20 September
2018, para 9.60
If the Law Commission’s proposals were implemented without any special provision for inalienable National Trust land, it could result in our long lease properties being lost to the nation. There is currently an exemption from enfranchisement of the freehold of houses and flats on inalienable land. This is an essential mechanism for ensuring the protection of significant buildings and places which have been entrusted to the National Trust to care for forever on behalf of the public at large, whilst putting the property to good use.378

They called for an exemption for National Trust properties from the right to extend a long lease for certain categories of house or flat where it would be “entirely inappropriate” for the leaseholder to be able to extend their lease. They also proposed that they should have the right to buy back any long lease of inalienable land, at market value, on each occasion during the lease when the leaseholder wishes to dispose of it.379 This, they argued, would balance the financial interests of the leaseholder, while preserving the inalienable nature of the land entrusted to the National Trust.

222. National Trust leaseholders are in a difficult position given the inalienability of the land on which their properties sit. We support the National Trust’s proposal to buy back any long lease at market value, which balances the obligations they face on inalienable land, while protecting the value of their leaseholders’ assets. The National Trust, and other charities, may wish to consider whether it is appropriate to sell leasehold properties on inalienable land in the first place.

Wider review of legislation

223. Several witnesses told us there needed to be a full review and consolidation of the law relating to leasehold properties, beyond the work currently being undertaken by the Law Commission. Professor Nick Hopkins told us that leasehold legislation was not fit for purpose:

Looking at the landscape of leasehold legislation, I would have to say it is not fit for purpose as it is. That view reflects what we have been told by my stakeholders in response to, particularly, our consultation on our 13th Programme of Law Reform [ … ] The need for reform has become much more urgent [ … ] I would say the legislation we have that governs residential leasehold as it stands is not fit for its purpose.380

224. Guy Fetherstonhaugh QC expressed his view that a full-scale review of the legislation was needed, arguing that, “We have had enough of little bits of amending legislation here and there. If people are going to reform leasehold further, there needs to be a vast, holistic, collective attempt.”381 Calls for a more comprehensive review of the legislation also came from beyond the legal professionals. Long Harbour expressed their view that limiting the Law Commission to focus on simplification and benefits for only one interest group, the consumer leaseholder, would not result in effective and fully considered reform in the sector:

378 National Trust ([LHR0695], para 4
379 National Trust ([LHR0695], para 12(2)
380 Q446 (Professor Nick Hopkins, Law Commission)
381 Q411 (Guy Fetherstonhaugh QC)
We are however concerned that the Terms of Reference given to the Law Commission by MHCLG for the purposes of its reform projects are excessively narrow [...] there is a significant and historic opportunity to improve on and simplify the complex and poorly drafted existing legislation relating to the areas currently under review, such as the Commonhold and Leasehold Reform Act 2002, and the Landlord and Tenant Act 1987, in order to provide clarity and certainty for all stakeholders, as well as effective regulation for the management and ownership of residential property into the future.382

225. The Minister for Housing and Homelessness told us that calls for a more comprehensive review of legislation needed to be judged in the context of what was achievable in limited parliamentary time.383 She told us it would be better to make “real improvements as soon as we possibly can”, rather than to wait several years for a more comprehensive review and forcing leaseholders to wait even longer for reform.

226. The work being undertaken by the Law Commission is important and welcome. However, the wider legislation that governs leasehold is not fit for purpose, and a more thorough review of leasehold legislation will be required. The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation, that would incorporate a full review of the Commonhold and Leasehold Reform Act 2002, the Landlord and Tenant Act 1987 and other relevant legislation.
Conclusions and recommendations

Future of leasehold tenure

1. There are clearly very significant differences between the freehold and leasehold tenures, but these are not always apparent to prospective leaseholders at the point of sale. As we will come on to recommend, this should be made much clearer to prospective purchasers from the start of the sales process. Our view is that it would be more appropriate to refer to this tenure as ‘lease-rental’. The Government and others may wish to use this terminology in future publications and policy statements. (Paragraph 12)

2. We are unconvinced that professional freeholders provide a significantly higher level of service than that which could be provided by leaseholders themselves, although we recognise that there are complexities in larger, especially mixed-use developments. The high premiums leaseholders are required to pay—ground rents, permission fees and enfranchisement costs—are paid regardless of the level of oversight the freeholder provides, and do not provide an obvious financial incentive for freeholders to work in the interests of leaseholders or promote the long-term condition of a building. (Paragraph 19)

3. As we will go on to outline in this report, too often leaseholders, particularly in new-build properties, have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance of power in existing leases, legislation and public policy is too heavily weighted against leaseholders, and this must change. Our report sets out various recommendations for how this might happen. (Paragraph 25)

4. We believe that there is a clear distinction between flats sold on leasehold terms and houses. We recommend that the sale of houses under leasehold should cease, as the Government has proposed, and urgent action be taken to enable those leaseholders in houses to be given the right to enfranchisement under appropriate low cost arrangements. (Paragraph 26)

5. We urge the Government to ensure that commonhold becomes the primary model of ownership of flats in England and Wales, as it is in many other countries. The Government was right to have asked the Law Commission to review the legislation concerning commonhold, in particular to make it easier to convert leasehold properties to commonhold, and we urge the Government to act quickly once this review is completed to implement the Law Commission’s recommendations. However, if the Government is serious about promoting commonhold as a viable alternative to leasehold, it must also ensure that the incentives to build leasehold properties—particularly, monetary ground rents and permission fees—are more limited. At the same time, the Government will need to ensure that concerns regarding commonhold properties are meaningfully addressed, including ensuring appropriate resident participation in the management of buildings. This might include the provision of training to residents in management roles and ensuring external expert support is made available in extreme circumstances. (Paragraph 42)
6. Our expectation is that once commonhold legislation is reformed, leaseholds begin to convert, and more commonhold developments are brought forward, leasehold as a tenure will become increasingly redundant. While it may be the case that some retirement properties and the most complex, mixed-use developments would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with much greater control for residents over service charges and major works. (Paragraph 43)

**Accusations of mis-selling**

7. It is clear that many of the leaseholders we heard from were not aware of the differences between freehold and leasehold at the point of purchase, in particular the additional costs and obligations that come with a leasehold property. The Government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property, the length of any lease, the ground rent and any permission fees. (Paragraph 51)

8. The right of first refusal currently only applies to leasehold flat owners. The Government is right to seek to extend this right to leasehold house owners. The Government must also close the legal loophole allowing developers to sell freeholds to subsidiary companies, which means leaseholders lose out on the opportunity to purchase the freehold at whatever price it is offered to the new freeholder. This would benefit both new and existing properties. The Government must also close the legal loophole allowing developers to sell freeholds to subsidiary companies, which means leaseholders lose out on the opportunity to purchase the freehold at whatever price it is offered to the new freeholder. (Paragraph 56)

9. The standardised key features document we recommend should also include, prominently, a price at which the developer is willing to sell the freehold within six months or, otherwise, a prescribed statement that the developer is not so willing, and that the purchaser would have to rely on their statutory rights. (Paragraph 57)

10. Developers denied that their sales teams deliberately misled leaseholders with partial sales information and false promises of purchasing their freeholds at an agreed price. But the number of near-identical stories from leaseholders reflects a serious cross-market failure of oversight of sales practices. Some affected leaseholders may have a strong claim that their properties were mis-sold. The Competition and Markets Authority should investigate mis-selling in the leasehold sector within the next six months and, where appropriate, make recommendations for appropriate compensation, with the option of enfranchisement. (Paragraph 61)

11. Consumers must be able to access independent and reliable legal advice when purchasing a property. Their interests cannot be served where they are coerced into using developer-recommended conveyancing solicitors, who rely on repeat business from developers and may not be inclined to put their client’s interests first. The Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor. Further, as outlined above, key sales information should
be provided at the start of the sales process in a standardised key features document, so purchasers are in no doubt about the costs involved in purchasing a leasehold property. (Paragraph 67)

12. It was extremely concerning to hear from so many leaseholders that their developer-recommended solicitors had failed to advise them of onerous terms in their leases. Such evidence suggests that some conveyancing solicitors have become too close to developers and did not put their client’s interests first. This does not, however, absolve developers of the blame for taking advantage of their dominant position and creating such leases in the first place. Buyers should be encouraged to ensure that they seek independent legal advice. (Paragraph 72)

13. The Government needs to act on its promise to help leaseholders seek redress where they have been let down by their conveyancing solicitors. The Government should undertake a review within the next six months to determine whether existing routes, including the Legal Ombudsman’s scheme, to redress are satisfactory or whether a new Alternative Dispute Resolution (ADR) scheme should be established for leaseholders with legitimate claims against their solicitors. (Paragraph 78)

Onerous lease terms

14. The Minister was right to say that ground rent bears no relation to the level of maintenance or quality of service provided to leaseholders—indeed, that is the function of the service charge. Many buildings are well managed without any ground rent being paid. While monetary ground rents may provide an economic incentive for professional freeholders to participate in the market, we have already concluded that—other than in complex, mixed-use developments and retirement properties—most do not provide a significantly higher level of service than that which could be provided by leaseholders themselves. While developers told us that leasehold houses are routinely sold at a lower price than their freehold equivalents, it is concerning that several leaseholders provided evidence that this was not a consistent policy. (Paragraph 83)

15. Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder’s ability to sell their property or obtain a mortgage. In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties. (Paragraph 91)

16. It is unacceptable that some leading developers have in the past sought to use their market dominance to exploit their customers through the imposition of terms leading to disproportionate ground rents. There is no excuse for such onerous terms, which are symptomatic of the imbalance of power in the leasehold market and are causing considerable distress to affected leaseholders. (Paragraph 95)

17. We were disappointed that, despite making two written requests for information, some developers were not willing to provide us with clear information as to the numbers of leasehold houses and flats that they had sold with ground rents exceeding 0.1% of the value of the properties. We are sceptical that the industry does
not readily have access to data on the houses they sold and the ground rents they set. There needs to be greater transparency from the industry and we call on them again to publish this information, to help clarify the true scale of the issue. (Paragraph 96)

18. The options for leaseholders with onerous ground rents are limited. House owners are entitled to pay to enfranchise after two years of ownership, thus removing any obligation to pay ground rent, onerous or otherwise. However, this would only be possible if the cost of enfranchisement—which we call to be made “substantially cheaper” later in this report—is both reasonable and affordable for the house owner. Flat owners, similarly, are entitled to enfranchise, although this is a much more difficult process, requiring the consent of 50% of the owners in a residential block of flats. Otherwise, leaseholders are reliant upon the benevolence of their freeholder to remove unreasonable terms. (Paragraph 98)

19. We are not convinced of the merits of the voluntary developer- and freeholder-led schemes that offer to convert leases with doubling ground rents to RPI-based review mechanisms, which have been supported by the Government. RPI-reviews may still see ground rents rise above 0.1% of a property’s value, which many lenders consider to be onerous. Most require RPI reviews across the entire length of the lease, as opposed to a defined initial period, while others demand high fees in exchange for removing onerous terms. These offers are not good value when compared to the Government’s proposed cap for ground rents on new leasehold properties. It is unacceptable that many freeholders and developers are not even offering this bare minimum. The Government’s threat to “eyeball” freeholders and developers is simply not good enough; leaseholders need stronger action from central Government—as we call for in this report. (Paragraph 106)

20. We note that it would be legally possible for the Government to introduce legislation to remove onerous ground rents in existing leases. While it would be difficult to change the terms of existing leases, it would not be impossible. Retrospective legislation could be compliant with human rights law. We understand that controlling rent would not be confiscation of property but control of its use. Thus, provided not imposed arbitrarily, it is likely Parliament could amend the terms of existing leases ‘lawfully’. Compensation would most likely result in a scheme being compliant with human rights legislation; the impact on society could also justify a scheme. (Paragraph 114)

21. Indeed, the Government proposes to reduce the premium payable to enfranchise, effectively buying freeholders out of a contractual income stream at a discount. There is little economic difference between reducing the statutory discount and reducing the contractual income stream, and this is likely to be equally justifiable in human rights terms. (Paragraph 115)

22. Freeholders would probably need to be compensated in order to ensure the legislation is compliant with human rights law. But that compensation need not necessarily be full value. The Government should undertake a comprehensive study of existing rents to determine the scale of the problem of onerous ground rents and the level of compensation which would be consistent with human rights law. (Paragraph 116)
23. Our view is that, within any retrospective legislation, existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism. While not as low as the Government’s proposed limit on ground rents for future properties, such a cap would reflect that leaseholders entered into a contract expecting to pay a modest ground rent over the course of their tenure and that freeholders have made an investment with a legitimate expectation of receiving some future revenue. Leaseholders should not face any charge, such as administrative and legal costs, or conditions for the variation of their lease to amend the level of ground rent as a consequence of retrospective legislation. (Paragraph 117)

24. Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers’ solicitors. (Paragraph 118)

25. We recommend that the Government should revert to its original plan and require ground rents on newly established leases to be set at a peppercorn (i.e. zero financial value). In most residential buildings, leaseholders receive very little in return for paying ground rent and it is unclear what value there is, for leaseholder or freeholder, in requiring a ground rent of £10. Monetary ground rents are also an impediment to the adoption of commonhold, which should be a greater priority for the Government, whilst they maintain a risk that forfeiture proceedings might be brought against leaseholders. (Paragraph 129)

26. While the Law Commission is currently undertaking a programme of work to reform commonhold, it will take some years for its proposals to be implemented and for commonhold to become a realistic alternative for most leaseholders. Until that point, freeholders are likely to continue to play some role in the supervision of large and complex mixed-use developments—and we accept that there will be little incentive for them to do so without a monetary ground rent. The Government may need to implement an exemption for mixed-use buildings, until such point that the reforms proposed by the Law Commission and others lead to commonhold becoming a realistic alternative for leaseholders in more complex buildings. Any exempted ground rent should not exceed 0.1% of the present value of a property, up to a maximum of £250 per year. (Paragraph 130)

27. It is fair that freeholders should be able to pass on reasonable costs to leaseholders where these have been incurred in the necessary administration arising from a change instigated by the leaseholder. But many of the permission fees and administrative charges we have heard about are plainly excessive, exploitative and yet another example of developers and freeholders seeking to extract money from leaseholders who have very limited recourse to challenge such fees. (Paragraph 136)

28. Alongside its proposal to cap ground rents on future leasehold properties, the Government should require that permission fees in the leases of new-build properties are not permitted to exceed the true administrative costs incurred by freeholders. The Government should also introduce legislation to restrict onerous permission fees in existing leases, as we have recommended for onerous ground rent terms. Compensation for costs already incurred may be appropriate if terms in existing leases are found to have been unfairly imposed upon leaseholders. (Paragraph 137)
29. The growing practice of imposing permission fees in the deeds of new-build freehold properties and enfranchised former-leasehold properties is an unjustified intrusion upon homeowners which many campaigners have rightly referred to as ‘fleecehold’. The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so. (Paragraph 138)

30. The Government should set clear timescales for the implementation of its proposal to introduce a cap on the administration fees that are incurred during the sales process. (Paragraph 139)

31. The Government should immediately ensure that the Law Commission has adequate funding to extend its programme of work to identify how unfair terms law could apply to existing leaseholders. (Paragraph 144)

32. Alongside a review of mis-selling in the leasehold sector, which we have called to be carried out within the next six months, the Competition and Markets Authority should exercise its powers under section 130A of the Enterprise Act 2002 to indicate its view as to whether onerous leasehold terms constitute ‘unfair terms’ and are, therefore, unenforceable. (Paragraph 145)

33. Were the CMA to determine that onerous terms in existing leases are indeed unfair, or that they were mis-sold, the Government should take further action. Where leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest. In such circumstances, the Government should establish a clear and easily accessible route to compensation for affected leaseholders. Where leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest. In such circumstances, the Government should establish a clear and easily accessible route to compensation for affected leaseholders. (Paragraph 146)

**Service charges, one-off bills and dispute mechanisms**

34. We have been greatly concerned by reports of leaseholders being overcharged, paying for services they are not receiving, and high commission fees for freeholders and managing agents. The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge. It should be clearly identified where commission has been paid to the managing agent or freeholder and the proportion of the cost this constitutes. This would improve transparency and allow leaseholders to make comparisons with equivalent properties. The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge. It should be clearly identified where commission has been paid to the managing agent or freeholder and the proportion of the cost this constitutes. (Paragraph 153)

35. Sinking funds urgently require regulation, to improve transparency for leaseholders and protect their money from less scrupulous freeholders and managing agents. Requiring them to be held separately, as legislated for in 2002, would improve
transparency and make it easier to identify the trust funds. The Government should immediately bring into force sections 42A and 42B of the Landlord and Tenant Act 1987 to ensure that leaseholders’ reserve funds are protected. (Paragraph 157)

36. There should always be a clear agreement between developers and local authorities before development begins as to the public areas and utilities that are to be adopted by local authorities. These details must be provided to prospective purchasers at the start of the sales process. (Paragraph 160)

37. The Government is right to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities should have the same rights as leaseholders to contest the fairness of those fees. As we have recommended for service charges, such fees should be provided to residents on a standardised form, which clearly identifies the individual parts that make up the overall charge. (Paragraph 163)

38. High one-off bills for major works can be greatly distressing for leaseholders. Florrie’s Law was introduced to protect council leaseholders from high one-off bills, but it has too many exemptions. (Paragraph 169)

39. Further, high bills are not only a concern in the social sector. We have received evidence from several leaseholders in the private sector who have been made to pay high one-off bills for major works. We recommend that the Government implement a new consultation process for leaseholders in privately-owned buildings affected by major works. A threshold of £10,000 per leaseholder should be established above which major works should only proceed with the explicit consent of a majority of leaseholders in the building. If no agreement can be reached with leaseholders, freeholders should only be able to proceed with major works subject to the authorisation of a tribunal, which would determine whether the works are both essential and represent value for money. If works are deemed to be inessential or unreasonably expensive—for example, due to excessive management fees—they should not be allowed to proceed. Where such works do proceed, the freeholder should be obliged to offer a low-interest, long-term loan to affected leaseholders. The threshold should apply regardless of whether funding is provided by central government and should apply to the cumulative costs of all major works within a five-year period. (Paragraph 170)

40. These proposals would rebalance power towards leaseholders, ensuring transparent and meaningful consultation over major works, pressure to keep costs low, and the explicit consent of those who ultimately have to pay the bill. They would also ensure that leaseholders are not able to block essential works unnecessarily. Further, this would also likely create a strong incentive for freeholders to manage sinking funds more effectively. (Paragraph 171)

41. The Government should introduce a Code of Practice for local authorities and housing associations, outlining their responsibilities to leaseholders in social housing blocks and offering guidance on best practice for major works. Local authorities should be required to provide evidence to leaseholders that they are receiving the same value from procurement practices in the public sector as they might reasonably expect in the private sector, and that public procurement rules are not used as an excuse for overcharging. Further, as is common in the private sector, local authorities should
42. Leaseholders should not be required to run the risk of paying their freeholder’s legal costs, even if they win. The Government must legislate to require that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case, unless the leaseholder has behaved unreasonably. This would go some way towards alleviating the risks to leaseholders in bringing service charge or other challenges to tribunal. The Government must legislate to require that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case, unless the leaseholder has behaved unreasonably. (Paragraph 179)

43. While the threat of forfeiture puts freeholders in a near unassailable position of strength in disputes with their leaseholders, freeholders do require an alternative, less draconian, mechanism for ensuring compliance with the lease. The Government should immediately take up the Law Commission’s 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder. (Paragraph 185)

44. We welcome the Government’s strong focus on improving regulation and routes of redress in the housing sector and note it has made multiple announcements over the past 12 months on a variety of proposals. However, we urge the Government to implement these measures with urgency, and to do so with a clear and joined-up approach that acknowledges how each of these mechanisms might work together, in particular with a Specialist Housing Court and the Housing Ombudsman Service, to provide a coherent route to redress for leaseholders. (Paragraph 192)

45. The Committee supports the proactive approach of freeholders in devising a code of conduct and urges the Government to review the case for mandatory regulation of the freehold sector, overseen by an ombudsman, with redress and sanctions where appropriate. (Paragraph 196)

46. We are concerned that the only government-funded service for leaseholders continues to have such a poor reputation among many leaseholders. The Government should undertake a comprehensive review of the Leasehold Advisory Service (LEASE), with a focus on maximising the service provided to leaseholders. The Government must, as a matter of urgency, appoint representatives of leaseholders to the board of LEASE, to ensure their voices are fully reflected in strategic discussions. (Paragraph 201)

**Enfranchisement**

47. It is not always clear to leaseholders that there is a statutory route to enfranchisement and lease extensions, and this has led to many accepting worse terms than they might otherwise have been legally entitled to. Freeholders should be required to provide an estimate of the statutory cost of enfranchisement or lease extensions when making an offer through the informal route. (Paragraph 208)
48. We support the Government in its objective to make it simpler, easier, quicker and cheaper for leaseholders to enfranchise. We agree that costs are too high and the process too complex. We support the Law Commission’s detailed analysis of this issue and look forward to the outcome of its consultation. **We urge the Law Commission to recommend a process that will make enfranchisement substantially cheaper. If this represents “an obvious transfer of power from one party to another”, as freeholders warned, then that may be a good thing. The Government should implement these changes within 12 months, as many leaseholders are waiting to enfranchise under a new system.** (Paragraph 212)

49. As we have already noted, the Government’s proposal to reduce the premium payable to enfranchise is equally justifiable in human rights terms as our recommendation to reduce freeholders’ contractual income streams through lower ground rents. If the Government is willing to countenance a cheaper process for enfranchisement, it should have no objection to removing onerous terms from existing leases either. (Paragraph 213)

50. While we look forward to the implementation of a reformed enfranchisement process, many leaseholders will struggle to afford to purchase their freeholds at any price. This is a particular concern for house lessees on estates with a mixture of leasehold and freehold tenure, but also where lease terms have affected the saleability and mortgage-ability of properties. **The Government should introduce a low-interest loan scheme, so that leaseholders who want to enfranchise or extend their leases—but cannot afford to or obtain the necessary finance—have the opportunity to do so. This could be promoted as a form of Help to Buy for leaseholders.** (Paragraph 216)

51. National Trust leaseholders are in a difficult position given the inalienability of the land on which their properties sit. We support the National Trust’s proposal to buy back any long lease at market value, which balances the obligations they face on inalienable land, while protecting the value of their leaseholders’ assets. The National Trust, and other charities, may wish to consider whether it is appropriate to sell leasehold properties on inalienable land in the first place. (Paragraph 222)

52. The work being undertaken by the Law Commission is important and welcome. However, the wider legislation that governs leasehold is not fit for purpose, and a more thorough review of leasehold legislation will be required. **The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation, that would incorporate a full review of the Commonhold and Leasehold Reform Act 2002, the Landlord and Tenant Act 1987 and other relevant legislation.** (Paragraph 226)
Annex: Summary of discussions at an informal roundtable event with leaseholders

On Monday 15 October 2018, we hosted a roundtable event in Parliament with leaseholders. The purpose was to give the Members of the Committee the opportunity to hear directly from leaseholders about their experiences. The event was attended by 50 leaseholders who submitted written evidence to our inquiry. Those who participated reflected the diverse experiences from across the country in both houses and flats.

The roundtable was structured around three questions. The discussion on each table was moderated by a Member of the Committee. At the end of the event, one leaseholder from each of the tables presented a summary of their discussions to the entire room.

The questions asked were as follows:

**What are the main issues you have faced as leaseholders?**

Escalating service charges and onerous ground rents were the most frequently cited concerns. Participants told us about large one-off bills for major works and high service charges, often without readily available and transparent accounting from those charging the fees. Many participants argued that the current leasehold system unfairly disadvantaged leaseholders and failed to provide adequate recourse against developers, freeholders, and management companies.

We heard that the First-Tier Tribunal process was expensive, time-consuming and emotionally draining, leaving a strong disincentive to pursue legal disputes. Some leaseholders told us that, at the time of purchase, they were unaware of what it meant to buy a ‘leasehold’ property, and some mentioned that solicitors neglected to inform them of terms relating to doubling ground rents and permission fees. Some participants felt that developer-recommended solicitors created a conflict of interest. Others reported that they were given verbal assurances during the sales process that they would be able to purchase the freeholds to their properties after two years, but ultimately found that they were not able to do so at the price that had been agreed.

**What support have you received?**

Some leaseholders reported that they were only able to turn to their personal networks for support (e.g. immediate family, friends, and online forums). Many had reached out to their MPs and local Councillors, but said there was often very little that elected representatives could do for them. The Leasehold Advisory Service (LEASE) was criticised by several participants. Most regarded the legal advice they had received to be insufficient. Legal advice from private lawyers was too expensive. Leaseholders from properties owned by the National Trust argued that many solicitors did not seem to understand the legal exemptions associated with the National Trust and other inalienable land.

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384 A summary is provided below of themes raised by leaseholders in response to the questions posed, although it is not an exhaustive list of all the issues raised.
What more should the Government do to support existing leaseholders?

At the end of the session, we asked the participants what they wanted us to recommend in our report. The most widely advocated recommendation was for the Government to “abolish leasehold”. Other suggestions included: a simplified and more affordable enfranchisement process; compensation for leaseholders affected by onerous terms; removal of exemptions on National Trust and other inalienable land; and stronger regulation of managing agents to prevent the imposition of high and opaque one-off bills and service charges.
Formal Minutes

Monday 11 March 2019

Members present:

Mr Clive Betts, in the Chair

Bob Blackman  Mr Mark Prisk
Helen Hayes    Mary Robinson
Kevin Hollinrake Liz Twist
Andrew Lewer   Matt Western
Teresa Pearce

Draft Report (Leasehold Reform) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 226 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 18 March at 3.30 p.m.]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee’s website.

Monday 5 November 2018

Sir Peter Bottomley MP, All-Party Parliamentary Group on Leasehold Reform; Jim Fitzpatrick MP, All-Party Parliamentary Group on Leasehold Reform; Martin Boyd, Chair of Trustees, Leasehold Knowledge Partnership. Q1–57

Jo Darbyshire, National Leasehold Campaign; Katie Kendrick, National Leasehold Campaign; Shula Rich, Director, Federation of Private Residents’ Associations. Q58–94

Monday 19 November 2018

Jason Honeyman, Chief Executive, Bellway; David Jenkinson, Group Managing Director and Main Board Director, Persimmon; Jennie Daly, Group Operations Director, Taylor Wimpey. Q95–214

Richard Silva, Executive Director, Long Harbour; Mick Platt, Wallace Partnership Group Ltd; John Dyer, Director, Savills, and Chair of Residential Management Committee, British Property Federation and Dr Nigel Glen, Chief Executive Officer, Association of Residential Managing Agents. Q215–267

Monday 10 December 2018

Gillian Boyle, Strategic Development Directorate, Manchester City Council, Larissa Reed, Executive Director for Neighbourhoods, Communities & Housing, Brighton and Hove City Council, and Amy Simmons, Head of Policy, National Housing Federation. Q268–307

Anthony Essien, Chief Executive, Leasehold Advisory Service (LEASE) Q308–334

Jonathan Smithers, former President, Law Society of England and Wales, and Beth Rudolph, Director of Delivery, Conveyancing Association Q335–373

Monday 14 January 2019

Matthew Jupp, Principal, Mortgages, UK Finance Q374–409

Guy Fetherstonhaugh QC, Falcon Chambers; Amanda Gourlay, Barrister, Tanfield Chambers; Giles Peaker, Partner, Anthony Gold Solicitors. Q410–444

Professor Nicholas Hopkins, Commissioner, Law Commission Q445–464

Monday 4 February 2019

Mrs Heather Wheeler MP, Minister for Housing and Homelessness, Ministry of Housing, Communities and Local Government; and Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges, Ministry of Housing, Communities and Local Government Q465–613
Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee’s website.

LHR numbers are generated by the evidence processing system and so may not be complete.

1. Adams, Ms Joan (LHR0453)
2. Ahmad, Mr Ciro (LHR0385)
3. Ahmed, Mr Yunus (LHR0003)
4. Alexander, Mr Craig (LHR0535)
5. Allison, Mr Simon (LHR0335)
6. Alton, Matthew (LHR0623)
7. Amatya, Mr Bikrish (LHR0631)
8. Anderton, Mrs Jennifer (LHR0364)
9. Anonymous (LHR0001)
10. Anonymous (LHR0008)
11. Anonymous (LHR0011)
12. Anonymous (LHR0014)
13. Anonymous (LHR0031)
14. Anonymous (LHR0036)
15. Anonymous (LHR0040)
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21. Anonymous (LHR0060)
22. Anonymous (LHR0066)
23. Anonymous (LHR0071)
24. Anonymous (LHR0079)
25. Anonymous (LHR0106)
26. Anonymous (LHR0123)
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70 Armstrong, Mr Michael (LHR0519)
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1. Chair to Secretary of State, 5 July 2018
2. Secretary of State to Chair, 23 July 2018
3. Chair to Bellway, Persimmon and Taylor Wimpey, 21 November 2018
4. Wallace Partnership Group Limited to Chair, 30 November 2018
5. Persimmon to Chair, 10 December 2018
6. Bellway to Chair, 11 December 2018
7. Taylor Wimpey to Chair, 12 December 2018
8. Association of Residential Managing Agents to Chair, 13 December 2018
9. Seema Malhotra MP to Chair, 14 December 2018
10. National Housing Federation to Chair, 17 December 2018
11. Chair to Redrow plc, 10 January 2019
12. Long Harbour to Chair, 11 January 2019
13. Wallace Partnership Group Limited to Chair, 31 January 2019
14. Chair to Bellway, Persimmon, Redrow plc and Taylor Wimpey, 11 February 2019
15. Consensus Business Group to Chair, 14 February 2019
16. Long Harbour to Chair, 15 February 2019
17. Minister for Housing and Homelessness to Chair, 18 February 2019
18. Bellway to Chair, 26 February 2019
19. Redrow plc to Chair, 28 February 2019
20. Persimmon to Chair, 4 March 2019
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