

Written evidence submitted by Justin Bennett BSc (Hons) to the Leasehold and Freehold Reform Bill Public Bill Committee (LFRB10)

Opening Statement

This is written evidence submitted by Justin Bennett BSc (Hons) FRICS ACI Arb, RICS Registered Valuer and Director of LBB Chartered Surveyors for the Committee addressing the Government proposals for reform.

This is from a Valuers' perspective but also, individually, I am both a leaseholder and share of freeholder owner in a substantial block of flats in central London.

I am a Fellow of the RICS and Director of LBB Surveyors and Valuers Limited. I have provided valuations and expert evidence under both the Leasehold Reform Act 1967 and Leasehold Reform Housing and Urban Development Act 1993 (as amended) since 1997. I have won industry awards for my expertise and was the collectively enfranchising leaseholders' expert in *Willingale v Globalgrange Ltd* [2000] 2 EGLR 55, the first case under the 1993 Act to reach the Court of Appeal relating to price and terms following landlord's failure to serve counter-notice.

This proposed legislation has already impacted the market by creating uncertainty, not just affecting sales of leasehold property, but all associated businesses.

The Bill and its associated impact assessments are ill-conceived and littered with inconsistency and errors. For example, there is reference to the 1987 Act rather than 1967 Act, as well as incorrect reference to a 4.5% deferment rates for houses rather than 4.75%.

The Bill is an almost totalitarian attempt to influence property ownership and asset wealth. In its current form only benefits one party: **the current leaseholder**.

There is a transfer of value from the freeholder (in whatever guise that be – individual, investment company or collectively enfranchising leaseholders (who acquired under the 1993 Act)) to the existing leaseholder. The cost of a lease extension may reduce, but ultimately the cost of acquiring a leasehold property will increase as a result.

The next leaseholder will pay a higher price for the leasehold flat if the cost is lower for an extension or to buy the freehold.

The attempted removal of valuation expertise from the process of lease extensions and freehold purchases will only amplify the problems associated with leasehold ownership. Determination of leasehold value will simply move to the market value (and Estate Agents) with online calculators being reliant on unqualified input values.

I am in favour of reform, but not as currently drafted, which has scant regard to the proposals of the Law Commission's reports.

Executive summary

I am in favour of:

- 1. The removal of requirement to wait 2 years.**
- 2. The extension of a lease to 990 years or by 990 years.**
- 3. Increasing the threshold from 25% to 50% where there are non-residential/commercial occupiers and mandatory leasebacks on the non-residential/commercial parts.**
- 4. A simplification of the process (but not valuation or costs recovery).**
- 5. The right to buy out a rent only (but for all leases, not just those of 150 years or more).**

6. **Not covered by the Bill: ban on future leasehold houses, save in exceptional circumstances – for example, where the land being developed is itself leasehold.**
7. **Not covered by the Bill: a removal of the “no-Act world” statutory assumption when determining relativity and introduction of “market relativity” (which is without a statutory discount).**
8. **Not covered by the Bill: A mechanism to cap onerous ground rents and an inclusion of a defined definition of what constitutes an onerous rent.**
9. **Not covered by the Bill: an option to require a freeholder to take a leaseback on areas with significant development value (to ability to develop, if the existing leases allow) or introduction of a right to offer a restrictive covenant in the case of development where the prospect is success deemed low.**

I am against:

1. **Whole scale changes to the valuation methodology. The mechanism proposed is complexly drafted but essentially a simple term and reversion valuation using the same formulas as used for 1967 Act and 1993 Act valuations.**
2. **The removal of marriage value. This exists and can be reduced by applying marriage value and shared in a different way to the arbitrary 50% under the existing legislation. For example: by proportion to the value of the parties existing interest.**
3. **The introduction of online calculators that are not fit for purpose, given often complex lease structures.**
4. **The prescription of capitalisation (yield) and discount rates (deferment). These should be market rates.**
5. **The removal of the rights to recover costs. This is compulsory purchase. The Bill proposes endless complex recovery provisions that are completely unclear as drafted. They simply do not make the process simpler.**

Referring to Part 1 and Part 2(21) of the Bill and the Schedules

I am in favour of the following:

These elements noted above would make it easier and cheaper for leaseholders to extend their leases and enfranchise whilst also protecting the freeholders’ rights.

Part 1, Paragraph 1:

- (1) **The removal of the two years’ ownership requirement to enfranchise or to claim an extended lease under the 1967 Act.**
- (2) **The removal of the two years’ ownership requirement to claim an extended lease under the 1993 Act and omission of S39(3A) of the 1993 Act.**
- (3) **The omission of S42(4A) of the 1993 Act**

Part 1, Paragraph 2:

- (1) **The right to make further claims under the 1967 Act for enfranchisement in circumstances such as deemed withdrawal.**
- (2) **The right to make further claims under the 1993 Act for enfranchisement in circumstances such as deemed withdrawal.**

Part 1, Paragraph 3:

- (1) **The increase in the non-residential limit on enfranchisement to 50% but with the subject to a requirement for a professional regulated managing agent to be appointed in such circumstances due to the different management issues of a mixed-use development and primarily residential development.**

Part 1, Paragraph 3:

See comment on Schedule 1 below.

Part 1, Paragraph 5:

The acquisition of only part of a superior leaseholder, but only on the basis that there is a equivalent reduction of the rent of the superior lease by the extension of or acquisition of an inferior lease.

Part 1, Paragraph 6:

The right to require leasebacks by the freeholder, but only in the event that relevant fees relating to the same are recoverable by the freeholder.

Alternatively, a simpler solution would be the status quo in relation to a residential non-participating leaseholders and mandatory leaseback of commercial premises.

Part 1, Paragraph 7:

- (2) The right to a 990-year lease extension at peppercorn rent under the 1993 Act, although it could be more simply be the right to a 990-year lease.

Part 1, Paragraphs 14 -17:

Insofar as it clarifies jurisdiction.

Part 1, Paragraph 19:

Only insofar as it provides clarification. (See Schedule 6 comment)

Part 1, Paragraph 20:

Only on the basis that this applies to all pre-2024 Act (if enacted) qualifying (Section 9(1)) leases. The existing proposal to allow a 990-year lease extension at peppercorn rent, will have a higher cost of the to be prescribed rates are lower that the current rates. In respect of enfranchisement, the option under Section 9(1) of the 1967 Act should remain (being the cheapest option) but with the power for there to be a determination of the rateable values (by a tribunal or the relevant rating office) in the absence of direct evidence being available due to lost or destroyed records.

Part 2, Paragraph 21:

Only on the basis that any leaseholder should have this right. The minimum term to solely buy out the ground rent is arbitrarily set at 150 years (See Schedule 7). This precludes anyone with an onerous rent buying out a rent.

Schedule 1

I support these proposals only insofar as they may make the process simpler and easier.

Schedule 6

- (8) Insofar as this provision of the 1993 Act was never enacted.

Referring to Part 1 and Part 2(21) of the Bill and the Schedules

I am against:

Part 1, Paragraphs 7 (1) and 8:

The right to a 990-year lease extension at peppercorn rent under the 1967 Act will result in a premium most likely equivalent to the acquisition of the freehold so is an unnecessary amendment.

Part 1, Paragraphs 9, 10, 11, 12 and 13, Schedule 2 to 5

See detailed commentary below

Part 1, Paragraph 18

The first-Tier Tribunal is often not capable of understanding complex law and as such, the removal of a right to apply to a higher court is simply counterintuitive.

Comments on Part 1, Paragraphs 9, 10, 11, 12 and 13, Schedule 2 to 5 of the proposed Leasehold and Freehold Reform Bill 2024

Opening Statement

Misleading Press coverage and effective lobbying by campaign groups such as the Leasehold Knowledge Partnership (the secretariat of the All-Party Parliamentary Group on Leasehold and commonhold reform) and misguided soundbites from successive Housing Ministers have stigmatised Leasehold as a form of tenure.

It is clear that the leaseholder/freeholder relationship is similar to a commonhold or communal system of ownership. The commune collectively retains the management not the individual. In both circumstances the administrative/management functions are not undertaken by the individual but the managing entity. The individual merely retains an obligation to contribute their share of the cost.

This is distinct to issues of value and cost of an extension of the lease or acquisition of a lease.

A lease is a right to occupy a property for a stipulated amount of time. It is home ownership but subject to communal rules (leasehold or commonhold). There is no distinction in this fact whether there is a lease of 9, 90 or 990 years.

When a leasehold property is purchased it is purchased with the professional advice: the conveyancing solicitor and in most instance the valuation surveyor, and perhaps a building surveyor.

The terms of the agreement relating to the property are laid out in the lease. Solicitors review this and advise their clients.

Rent

The “ground rent scandal” – mainly relating to houses but including some flats – was caused by abuse of the ground rent: i.e. 5 or 10 years RPI reviews or worse still rents doubling every 5 or 10 years.

A period of high inflation has stigmatised the “pledge” to rectify this by RPI increases. However, to put this into perspective. These could be removed by removing these onerous rents from the market by legislating for onerous rents to be treated as doubling to a minimum term of say 25 years or 33 years, as has been historically the case.

At 25 years this is c2.8% inflation in the rent over the period but the periods between reviews there is no increase. At 33 years this is c2.15% inflation.

Neither is too dissimilar to the Government's headline inflation target of 2%.

The leaseholder will be paying a fixed rent through every period. So, for 24 of 25 or 32 of 33 years a leaseholder will be paying below “real term” value.

Marriage value

Marriage value exists. It exists regardless of statute. A Market Value based relativity is a far more equitable solution. Removing the existing statutory assumption would immediately reduce the

premium on short leases. Any other proposal is a simple transfer of value from the existing freeholder to the existing leaseholder. In the future, there will simply be a lower premium and higher flat value, whereas now, there is a higher premium and lower flat value.

The values of a lease reduces downwards as the leases grow shorter, as the tenants have already occupied the property and their allocated period of occupations.

Leases have always been *diminishing assets* by their very nature.

A lease extension has been sought to increase the contract term at a price. The price paid has always been the premium for the lease extension.

The Bill proposes to radically change this but limiting the capitalisation of ground rent and also removing marriage value.

This is a totalitarian redistribution of wealth without compensation. The full extent of which is subject to the prescriptive rates to be adopted.

The Government's impact assessment uses a 3.5% discount rate from the "Green Book". If this rate replaces the generic 4.75% (houses) and 5% (flats) discount rates for most properties under the 1967 and 1993 Acts, then the lease extension or freehold acquisition costs will increase for all bar a few leaseholders with very short leases. This is counterintuitive.

Illustration 1: a lease extension under the existing legislation – additional 90 years

| Diminution in Value of the Head Leaseholder's Interest | | | | | | |
|---|----------------|--|--------|---|---------------|-----------------|
| Step 2 | | | | | | |
| 2.01 Value of Head leaseholder's Interest before Extension: COMPETENT LANDLORD | | | | | | |
| Present Ground Rent Income | | | | £ | 500 | |
| YP (single) | 10.49 years @ | | 6.00% | £ | 7,619,923,872 | £ 3,810 |
| Present Ground Rent Income | | | | £ | 1,000 | |
| YP (single) | 21.00 years @ | | 6.00% | £ | 11,763,881,09 | |
| PV £1 | 10.49 years @ | | 6.00% | £ | 0,542,804,568 | £ 6,385 |
| Present Ground Rent Income | | | | £ | 2,000 | |
| YP (single) | 21.00 years @ | | 6.00% | £ | 11,763,881,09 | |
| PV £1 | 31.49 years @ | | 6.00% | £ | 0,159,675,264 | £ 3,757 |
| Present Ground Rent Income | | | | £ | 4,000 | |
| YP (single) | 21.00 years @ | | 6.00% | £ | 11,763,881,09 | |
| PV £1 | 52.48 years @ | | 6.00% | £ | 0,046,971,215 | £ 2,210 |
| Reversion: | | | | | | |
| Unimproved value of flat | 920.98 years | | 99.0% | £ | 1,074,150 | |
| PV £1 | 73.48 years @ | | 5.00% | £ | 0,027,728,562 | £ 29,785 |
| Unimproved reversion less | | | | £ | - | £ 45,947 |
| 2.02 Value of Head leaseholder's Interest after Extension: | | | | | | |
| Unimproved value of flat | 830.98 years | | 99.0% | £ | 1,074,150 | |
| PV £1 | 163.48 years @ | | 5.00% | £ | 0,000,343,471 | £ 369 |
| Diminution in Value of the Head leaseholder's Interest | | | | | | £ 45,578 |
| Step 3 | | | | | | |
| Freeholder's Share of Marriage Value | | | | | | |
| 3.01 Value of Combined Interests post extension | | | | | | |
| Value of extend lease | | | 99% | £ | 1,074,150 | |
| Value of freeholder's interest after grant of lease extension | | | | £ | 0 | |
| Value of head leaseholder's interest after grant of lease extension | | | | £ | 369 | £ 1,074,519 |
| compared with: | | | | | | |
| 3.02 Value of Combined Interests before extension | | | | | | |
| Value of existing lease | | | 88.09% | £ | 955,777 | |
| Value of freeholder's interest after before grant of lease extension | | | | £ | 0 | |
| Value of head leaseholder's interest before grant of lease extension | | | | £ | 45,947 | £ 1,001,724 |
| 3.03 Combined gain on grant of lease extension | | | | | | |
| Freeholder's share of any Marriage Value | | | 50% | | | £ 36,398 |
| Step 4 | | | | | | |
| 4.01 Premium payable for grant of lease extension | | | | | | |
| | | | | | | £ 81,976 |

Illustration 2: a lease extension under the proposed legislation – but additional 90 years (for comparison) and at 3.5% discount rate.

| Step 2 | | | | | | | |
|---------------|--|----------------|-------|-------------|-----------|----------|--------|
| 2.01 | Value of Head leaseholder's Interest before Extension: COMPETENT LANDLORD | | | | | | |
| | Present Ground Rent Income | | | | £ | 500 | |
| | YP (single) | 10.49 years @ | 6.00% | 7.619923872 | £ | 3,810 | |
| | Present Ground Rent Income | | | | £ | 1,000 | |
| | YP (single) | 21.00 years @ | 6.00% | 11.76388109 | | | |
| | PV £1 | 10.49 years @ | 6.00% | 0.542804568 | £ | 6,385 | |
| | Present Ground Rent Income | | | | £ | 1,085 | |
| | YP (single) | 21.00 years @ | 6.00% | 11.76388109 | | | |
| | PV £1 | 31.49 years @ | 6.00% | 0.159675264 | £ | 2,038 | |
| | Present Ground Rent Income | | | | £ | 1,085 | |
| | YP (single) | 21.00 years @ | 6.00% | 11.76388109 | | | |
| | PV £1 | 52.48 years @ | 6.00% | 0.046971215 | £ | 600 | |
| | Reversion: | | | | | | |
| | Unimproved value of flat | 920.98 years | 99.0% | £ | 1,074,150 | | |
| | PV £1 | 73.48 years @ | 3.50% | 0.079822367 | £ | 85,741 | |
| | Unimproved reversion | | | | £ | - | |
| | less | | | | | £ 98,574 | |
| 2.02 | Value of Head leaseholder's Interest after Extension: | | | | | | |
| | Unimproved value of flat | 830.98 years | 99.0% | £ | 1,074,150 | | |
| | PV £1 | 163.48 years @ | 3.50% | 0.003609883 | £ | 3,878 | |
| | Diminution in Value of the Head leaseholder's Interest | | | | | £ | 94,697 |

The cost of the lease extension rises by from c£82,000 to £94,700. This increases to £98,600 for a new lease of 990-years or for an additional 990 years, as the c£3,900 retained value post extension is paid to.

If the deferment rate remains at 5% and the marriage value is excluded, the amount payable would be reduced to £12,833 (capitalised rent from illustration 2) plus £45,947 (the reversion value from illustration), being £58,780 or c£58,800.

This wealth transfer of £23,200 is direct to the existing leaseholder, who was mindful of the costs of the lease extension when acquiring the lease in the first place.

Should they choose to not extend the lease, they would sell and expect an increase in value of their flat by an equivalent amount, as the new purchasing leaseholder would pay less.

Cause and effect

The reversion of the Leases are owned by the Freeholders who sold the leases (with or without the expectation of a continued income stream, depending on what rent was reserved under the lease).

The proposed Bill (subject to the ongoing ground rent consultation) removes this anticipated return or severely limits it.

This loss of revenue will affect individuals who have invested in anticipation of pension income (as many of my clients), pension funds, local authority freeholders (many of whom are already financially insecure), investment landlords (often termed "professional landlords"), the older estates (such as Howard de Walden, Cadogan and Grosvenor who continually reinvest in the community), the charity estates (such as Church Commissioners, who use their income to fund projects such as their homeless charities) and the often forgotten leaseholders who collectively enfranchised and purchased their freeholds.

For this forgotten "participating" leaseholders, who now own their freeholds, with or without the help of "White Knight" investors, there could be catastrophic consequences with freeholds becoming bona vacantia without the income from the leases for the non-participating leaseholders.

Not all tenants will have participated (the non-participating leaseholders) in the purchase of the freehold of their block. The participating leaseholders will have paid the former freeholder compensation (under the 1993 Act).

These non-participating leaseholder will not receive a windfall under the proposed Bill, if marriage value and capitalisation of the ground rents are both removed from the calculation.

As such, Resident Owner Freeholders will be financially disadvantaged for undertaking an enfranchisement claim under the 1993 Act and those who did not purchase the freehold will receive a windfall via the ability to obtain a significantly discounted lease extension.

Worse still, if they default on the loans that they took to acquire the freehold, they could face the very real proposed of having to reacquire freeholds that have become bona vacantia.

Surely this is unfair and contrary to their human rights. Coupled with this, is the limitations proposed on the recovery of costs.

Costs of enfranchisement and extension under the 1993 Act

Section 33 and 60 is entirely removed. This is the right for the freeholder to recover their reasonable professional fees in this matter.

The foundation of the principals of Leasehold Reform is the right for a leaseholder to compulsorily acquire a lease extension or their freehold.

As with all other forms of compulsory purchase, the existing legislation allows the recovery of reasonable fees for dealing with the notice, the limitation being on valuer's negotiation fees (which the freeholder bears) and costs of any tribunal proceeding (where each side bears their own costs).

The new proposal suggests that, in most instances the freeholder should pay for their own professional advice, save for a complexly drafted set of circumstances.

This restriction on costs recovery particularly impacts their ability to seek valuation advice, assumedly on the basis that those drafting the Bill had a blinkered view as to the identity of the freeholder.

Other than larger portfolio landlords, who may or may not have annual reviews of their portfolios, this is a major restriction and disadvantage.

An amateur/accidental (for example someone inheriting)/individual investor or leaseholders who collectively enfranchised under the 1993 Act are most likely not going to have the expertise to decide a premium without professional valuation advice.

Others, such as local authority freeholders (with obligations to constituents) and charity estates (with Charities Act obligations) will not be able to decide a premium without professional valuation advice.

The intention of the Bill is lower premiums under the proposals. The freeholder (regardless of identity) will suffer additional loss by having to pay their own fees to be represented.

Again, surely this is unfair and contrary to their human rights.

Cause and effect

An already reduced premium could be further impacted by the right to vary a rent.

If a lease has been reduced to a peppercorn rent first, it could be that there is little or no value in the reversion. If this is the case, there is no incentive for the existing landlord to even deal with the notice.

On buildings where there are significant areas that require leasebacks, this could be a significant complication to the process, particularly even if the proposed limited recovery of costs is enacted.

It is not difficult to foresee a situation where a freeholder simply cannot afford to deal with the matter as the non-recoverable costs exceed the premium/purchase price being paid.

If the statement of Mr Gove during the Second Reading of the Bill are to be believed, regardless of the outcome of the consultation, the situation could be worse for freeholders, with their income stream removed with all lease being retrospectively reduced to a peppercorn rent, regardless of the circumstance behind their initial grant.

As noted above, the purchaser of a lease would have received advice prior to acquisition of the lease. If that advice was unclear or misleading then there is recourse via their advisor's indemnity insurance.

This should also be the case if rents were reviewed to onerous levels during informal lease extensions or for other variations lease.

However, mindful that this has been resolved for future leases by the Leasehold Reform (Ground Rent) Act 2022, all of the proposals only benefit the existing leaseholder as noted above.

Also as noted above, much of this can be removed by removing by legislation on a definition of onerous rents and retrospectively changing those or rents doubling to a minimum term of say 25 years or 33 years, as has been historically the case: 33 year doubling being a c2.15% rate of inflation between reviews.

Conclusion

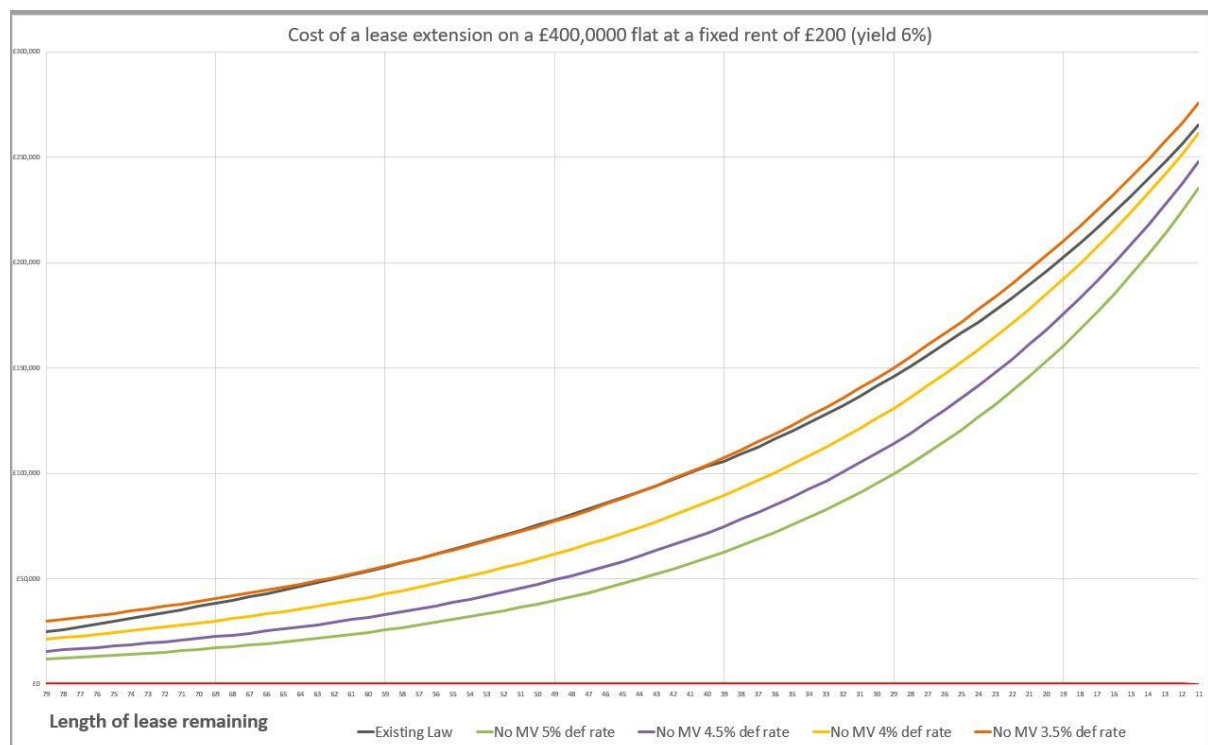
The Leasehold and Freehold Reform Bill has already impacted the residential property market.

Existing leaseholders are in limbo. Do they extend or wait? By waiting they risk that there is no change and under the existing legislation the cost of a lease extension premium or price for the freehold will increase as the lease(s) will be shorter.

As a valuers it is an impossible situation. No advice can be provided as the impact of the proposals cannot be assessed, as the proposed prescriptive rates have not been released.

The risk is therefore transferred to the existing leaseholder. The future leaseholder is not affected as they acquire knowing that they buy and extend now at one price or buy and extend in the future at the same overall cost.

Needless to say, if the prescriptive rates try to balance the overall loss to freeholders, there will be no opportunity to negotiate and leaseholders may suffer.



The Bill is ill conceived and extremely poorly drafted. Whilst I support a reform, this single forced transfer of money from existing freeholder to existing leaseholder is nothing short of theft. The Bill demonstrates a government's willingness to interfere in mutually agreed contracts which could potentially deter future investors in the United Kingdom as a whole.

A redress of the creeping, higher premium is a good idea, but this could be done far more simply. Limiting landlord's recoverable costs will lead to more and more landlord's just not responding and also lead to a race to the bottom on fees, meaning poorer and poorer representation for both leaseholders and freeholders, as experts leave the sector.

Leaseholders will see the lower cost to acquire freeholds tempting, but with the widening of the opportunity to enfranchise, only increases the risk of resident freehold companies failing and freeholds becoming bona vacantia.

It is not difficult to imagine a scenario where existing leaseholders have collectively enfranchised under the 1993 Act losing out to another group of leaseholders acquiring under the new legislation at lower cost than those acquiring under the 1993 Act paid for the leases of the second group of leaseholders. A totally unequitable outcome.

Existing freeholders are in limbo. Their asset value already depressed.

January 2024.