Written evidence submitted by Withheld to the Leasehold and Freehold Reform Bill Public Bill Committee (LFRB18)

Executive Summary

1. I am a leasehold campaigner and RMC director for a development in north London. I am personally affected and hugely concerned by subversive practices upheld by the leasehold system resulting in peoples homes being turned into debt traps.

2. The root cause of many of the issues I suspect the committee will know are caused by a corruption of incentives. Splitting the freehold / leasehold title on creation of a new unit currently spawns an income generating asset and fundamental conflict of interest.

3. This cynical routine should be ended by **mandating 'share of freehold'**. This would remove the distant freeholder role which other jurisdictions prove is not required.

4. Commonhold as a system for flats has many benefits and is broadly similar to the tenure models in other jurisdictions[1]. However as a pragmatic campaigner I recognise it presents implementation challenges in the short term for England and Wales (e.g. the lending and conveyancing ecosystems required to make this work is not ready).

5. Assuming Commonhold *cannot* be delivered in the short-medium term, similar ends could be achieved with leasehold, eradicating the conflict of interest by:

    a. **For new builds:** Ban onwards sale of freeholds from developers to residential freehold investors. Instead ensure the freehold title is passed to leaseholders upon initial purchase (via share of freehold).

    b. **For existing builds with a distant freeholder:** Establish a mechanism to transfer the freehold interest from the current distant freeholder to the leaseholders (via share of freehold). Note, this must not result in a potentially unintended boon for freeholders - the valuation mechanism must be fair.

Background

6. I write as a leaseholder turned campaigner and a volunteer director for a Resident's Management Company (RMC)[2]. I welcome the prospect of fundamental changes to the leasehold system and believe there is significant room for strengthening the bill.

7. I am a management consultant by background. My professional work is not related to housing in any way, however since 2021 dealing with leasehold related issues (including litigation with a freeholder over insurance commissions) has provided a front row seat into what I can only describe as an unfurling utter scandal[3]. Three years in the situation continues to cost me financially and mentally.

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[1] E.g. Strata Title in Australia & New Zealand, Bostadsrätt in Sweden, Condominium in USA and Canada

[2] A 1,000+ unit development in north London, Company No.: 07058473

[3] A combination of leasehold, cladding, profiteering, total lack of accountability and government ambivalence has a lot of similarities with the Post Office Horizon scandal which I hope will one day emerge.

8. My analysis presents my personal view based on my experience over recent years as a leaseholder and volunteer RMC director.

9. In this submission I compare my experience of two different leasehold properties. This provides a perspective on where the problem is created. I then explain how this has happened, what I believe should be done about it. Appendix 1 contains some questions offered for the committee to consider during its evidence gathering process.

10. Omission of comments on areas of the legislation not mentioned in this submission does not mean I agree with it or think no further scrutiny is needed.

Establishing basic first principles

11. It is critical that any reforms are ambitious and based on clear first principles. A good principle for the government to adopt would be SoS Michael Gove's own words in January 2023: "if you buy a home it should be your own"[4]. In a property owning democracy it is absurd this even needs saying, but worse – what is proposed in this "landmark legislation" does not even attempt to achieve this.

12. Following the government's outlining of the Leasehold and Freehold Reform Bill in November 2023 an apt summary emerged from a fellow campaigner on "X": *"banning leasehold for houses is like banning fox hunting in cities".* Of course leasehold houses are an absurdity but they are yesterday's scandal. It is critical that attention is now paid to flats where the lion's share of abuse has always occurred.

13. Leasehold concerns are complex with many flavours as well as various actors seeking to maintain dubious business models. It is essential the complexity is understood and that any attempt to divert from reality is recognised for what it is.

14. I use my experience of two separate leasehold properties (chalk and cheese) to attempt to illustrate the issue below.

A tale of two leaseholds

15. It is true that not all leasehold properties present the leaseholder or freeholder with issues – many are happy. It is *also* true that many (millions) are subjected to financial oppression and worse purely as a result of buying a home.

16. I am in a somewhat unique position of experiencing both a benign and subversive example of leasehold. My wife and I together own two leasehold properties that are interesting to compare because of the significant differences in their set-up.

    a. **Flat #1.** A flat in a converted building (built in 1890s).

    b. **Flat #2.** A leasehold flat I purchased from a developer brand new in 2015 as a first time buyer (using government Help to Buy).

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[4] The words of SoS Michael Gove on Sky News (January 2023) https://www.thetimes.co.uk/article/michael-gove-vows-to-scrap-feudal-leasehold-system-this-year-920srddc6

17. I compared key aspects recently on LBC[5] and have presented them in Table 1.[6]

Table 1: Comparison of two leasehold properties

	Flat #1	**Flat #2**
Tenure type	Leasehold	Leasehold
Built in	1890's (converted to flats in 1970's)	2015
Freehold owned by leaseholders?	**Yes** (via a share of freehold company)	**No** (External freehold investment company purchased it from the developer in 2016)
Management company	The leaseholders via the share of freehold company	Residents Management Company (RMC) – controlled by the leaseholders (I am a director)
Managing agent	None appointed – the residents manage themselves due to small size, but could appoint one if desired.	Third party managing agent, appointed by the RMC
Initial lease length	250 years from 2008 (the year the freehold was purchased by the leaseholders)	250 years from 2015
Dispute forum	Tribunal system – Landlord and Tenant Act	Tribunal system – Landlord and Tenant Act
Number of units in building	5	49

18. Both Flat #1 and #2 are leasehold properties. Both flats are 'managed' by the leaseholders (or managing agent appointed by the leaseholders).

19. The main difference is that Flat #2 has an outside profit-seeking investor owning the freehold, while Flat #1's freehold is owned collectively by the leaseholders[7].

20. Ownership of the freehold by a third party has the potential to create a fundamental conflict of interest which is what has played out in the case of Flat #2.

    a. For example, as we have seen with the buildings insurance scandal – Flat #2's freeholder has the right of placing the buildings insurance which it charges back in full to the leaseholders. Leaseholders of Flat #2 have no apparent corresponding right to access information about that transaction and any kickbacks paid from the insurer / broker back to the freeholder. Leaseholders must pay the amount in full or risk

[5] https://www.youtube.com/watch?v=2tQORyCeZuE

[6] N.b. this comparison is not exhaustive - there are a number of other leasehold scenarios that I am not drawing attention to as I do not have first hand knowledge and / or for sake of simplicity.

[7] Similar in all but name to "Commonhold" which is common in the rest of the world (no external freeholders)

forfeiting their flat back to the freeholder. It is not in the freeholders financial interest to obtain a lower quote for 'their' building. Conversely, Flat #1 leaseholders simply engage directly with a broker and seek cover at the best price, as you'd expect in any normal market.

21. Leaseholders in the example of Flat #2 are (through no fault of their own) at the mercy of the good nature of the freeholder and I suggest that it is this scenario that can and is systematically abused by rent seeking investors lacking good conscience.

22. The building Flat #2 is in is much larger than that of Flat #1 but this is not a reason to need an external freeholder as is often claimed by the freehold sector seeking to defend its rent-seeking business model[8]. The absurdity is that they are there to begin with. The management of Flat #2 is already responsibility of the leaseholders via an RMC who in this case have dealt with all aspects around appointing the managing agent and pursuing cladding remediation. Profit-seeking freeholders own the 'land rights' because they were able to sneak in and buy the freehold from the developer for as little as 2.5% of the capital value (see below).

23. The irrelevance of many such freeholders is underlined by the fact blocks of similar scale in other comparable jurisdictions (e.g. Sweden, Australia, United States) do not require a third party freeholder to function at all. In most observable cases[9] these buildings function significantly better *due to an alignment of interests.*

24. To add insult to injury for building safety crisis afflicted leasehold properties (such as Flat #2), the presence of third party freeholders has in many cases obstructed progress partly as leaseholders had no link to the developer because despite being sold a home they don't 'own' the land.

25. Before the law was changed with the Building Safety Act (2022) freeholders were even profiting from the chaotic demise of their own buildings, through for example commissions on increased insurance or remedial work packages.

If the freeholder is not needed in Flat #2, what are they doing there?

26. In my view it should never have been possible for the freehold of the building containing Flat #2 to be sold by the developer to an investor. Indeed this appears to me to be the spirit of the right of first refusal in s.5 of the Landlord and Tenant Act 1987[10]. Instead the developer could and should have included a share of the freehold in the sale of each flat (akin to the ownership model of Flat #1 – share of freehold). This didn't happen in practice because the principle of the current law can be easily ignored in the name of profit. Flat #2 is not unique. That is the problem.

27. Instead, for new build flats the process of an individual buying a share of freehold <u>in addition</u> to their leasehold is not just **'opt in'** but also becomes dependent on 50%+ participation of fellow leaseholders. Needless to say, this situation is nonsensical to people outside of England and Wales.

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[8] For example: https://residentialfreeholdassociation.co.uk/rfa-response-to-comment-from-the-secretary-of-state-for-dluhc/

[9] For example; Sweden: https://www.youtube.com/watch?v=6AEa0V8NCSY&t=1s , Australia: https://www.youtube.com/watch?v=0wPkdNMmTBg

[10] https://www.legislation.gov.uk/ukpga/1987/31/part/I/crossheading/notices-conferring-rights-of-first-refusal

28. The reality is, once flats are sold this becomes almost impossible to achieve: many leaseholders may be non-resident and not able to contact one another, or simply not have the funds available without requiring additional mortgage borrowing. Then if >50% is secured but <100%, the non-participating leaseholders will owe the others ground rent, which in my view is a completely unnecessary complication.

29. The result is a boon for developers and investors with freeholds generally sold to third parties who use the freehold rights as an income stream to exploit over time.

30. The act of 'splitting of the title' gives rise to conflicts of interest as outlined. This can be simply resolved on new builds by ensuring each new flat is sold with a share of freehold from the beginning, and leasehold control established via an RMC. **Mandating an RMC for each development alone will not solve the issue as control without land rights is an illusion of control** (as per example of Flat #2).

31. Freehold investors often seek to portray their purpose as custodians or somehow enabling subsidised living. Historically many freeholders were noble but the modern breed that has taken up the moniker appear overwhelmingly to be shell companies pursuing opportunities presented by outdated legislation to make as much money as possible. Most made to support such business models appear to be illogical at best[11].

32. An argument often used by vested interests against my suggestion is that collective freehold ownership (via share of freehold) would result in leaseholders cleaning their own corridors and fixing their own lifts. This is scaremongering nonsense.

33. Truly enfranchised leaseholders (i.e. with freehold ownership and leaseholder controlled RMC's) are able to appoint for example a managing agent and insurance broker etc to perform management duties on their behalf and maintain the buildings in their interests. In this scenario there is (by default) normal, healthy competitive pressure to win business. Leaseholders are not subject to the good nature of a freeholder; much more akin to comparatives in other jurisdictions.
34. The solution is to mandate 'share of freehold' for all new builds. This would be a significant simplification of the current situation and would strengthen the Bill by ensuring it stops the creation of more problematic conflicts of interest.

35. *N.b the freehold share for Flat #2 was ~£8000 in 2015 (~3% of purchase price). Without 50%+ of leaseholder participation anyone who wanted to purchase their share was unable to. The freehold was sold to an investor whom we all now owe escalating 'ground rent' to. We'll soon have paid more to the investor in ground rent and commission than the freehold cost in the first place. Unless there is effective intervention we will owe this in perpetuity, and homes like Flat #2 remain debt traps.*

What should happen?

36. Government must "de-fang" leasehold by removing the conflict of interest currently being created by default. This can be easily achieved by amending legislation to:

[11] E.g. how can freeholders be supporting affordability by chipping 2% of the overall capital for the land rights while simultaneously increasing costs to leaseholders over the lifecycle due to their rent seeking?

a. **Ban developers selling freeholds on to investors**. It is this activity that undermines peoples homes, turning many into an income stream for another.

b. Instead, **mandate a share of freehold is included in all future developments as well as resident control via an RMC** from Day 1. (I have outlined my proposal diagrammatically in Figure 1 to aid understanding)

c. **Enforce standards** to ensure RMCs / developments are responsibly set up by developers (e.g. maximum number of units / complexity for a single RMC) so they are established in the interests of leaseholders and do not become too complex to deal with. Developers must bear responsibility for this.

d. **Provide a means of redress for existing developments** where freeholds have already been sold to third party investors. Most likely this will require some transfer of money from to the freeholder to acquire the freehold back but it should not enrich the freeholder and should take account of excess monies paid to date where a freeholder has behaved improperly[12].

e. **Take inspiration of communal living approaches in other countries**, such as in Sweden where commercial units in multi-occupancy builidngs are owned by the flat owners as part of the common area. Flat owners have a say over the type of business that operates under their home and the unit rental income contributes to upkeep and service charge. These are desirable places to live[13].

Thank you for your attention and contribution to this important issue. I look forward to seeing how the bill is strengthened.

Yours faithfully,

[redacted]

[12] Note, in the case of exploring kickbacks paid to freeholders out of their own pockets, this can be very difficult for leaseholder to prove and can face the daunting prospect of paying their freeholders legal costs.

[13] Commercial units in multi-oc buildings in Sweden: https://youtu.be/6AEa0V8NCSY?si=7R7GS2FroranArsD&t=237

Proposal to strengthen Leasehold and Freehold Reform Bill: Mandating Share of Freehold for all new flats

[redacted]

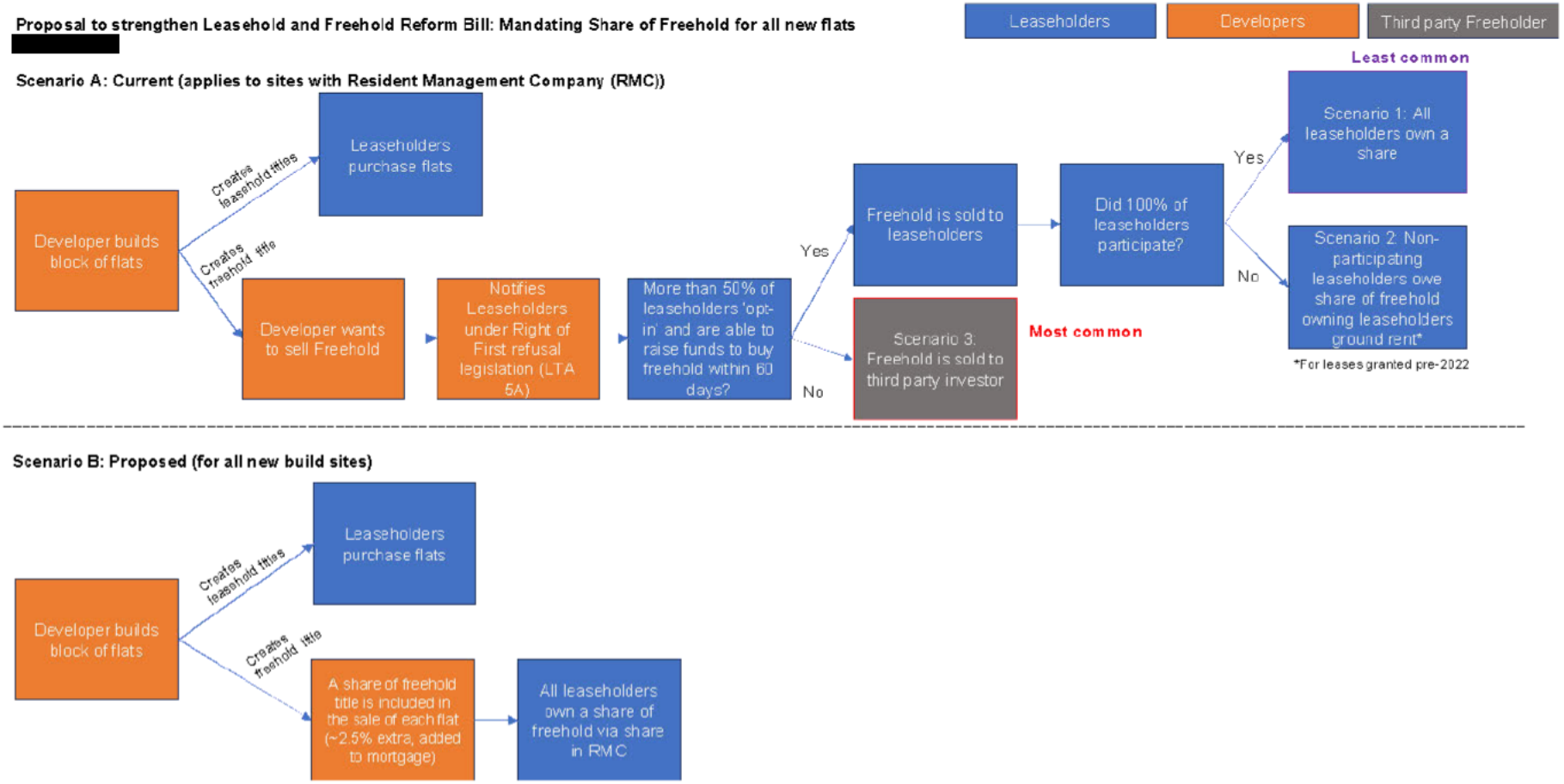

Figure 1: Mandating Share of Freehold - current and proposed scenarios

Appendix 1:

Inspiration for questions for the committee to ask

37. **To developers:** "when you create a new multi occupancy building why do you sell the freeholds on to investors in the first place? Given leaseholder controlled RMCs are common place why don't developers include a share of freehold with each flat at point of sale?"

38. **To freehold investors:** "Given multi-occupancy buildings in other jurisdictions such as Australia operate well without residential freeholders what purpose do you serve? In cases of a tripartite lease where a leaseholder controlled RMC is in place to appoint a managing agent and / or manage the building, what added value does the involvement of a freehold investor generate? "

January 2024.