

## **Written evidence submitted by Nick Hopkins, Law Commissioner to the Leasehold and Freehold Reform Bill Public Bill Committee (LFRB21)**

### ***About me***

- 1.1 I am the Law Commissioner for Property, Family and Trust Law. I have led the Law Commission's work on enfranchisement and commonhold since the Commission's work began in those areas in 2017, and additionally the Commission's work on the right to manage ("RTM") since publication of its report in 2020.

### ***About the Law Commission***

- 1.2 The Law Commission for England and Wales is the statutory body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform in areas where the Commissioners consider it is needed. The aim of the Commission is to ensure that the law is fair, modern, simple and cost-effective. There are four Commissioners who each have responsibility for separate areas of the law, and the Commission is chaired by a fifth Commissioner who is a member of the Court of Appeal. The Commission operates independently of Government and consults widely prior to making any recommendations for reform.

### ***The Law Commission's project on residential leasehold and commonhold***

- 1.3 I refer to various documents in this evidence, all of which are available on the Commission's website: <https://lawcom.gov.uk/project/residential-leasehold-and-commonhold/>. I also set out key documents produced by the Law Commission in Appendix 2.
- 1.4 In December 2017, the Law Commission started a project to examine three related areas of the law: enfranchisement, RTM, and commonhold.
- 1.5 Detailed Terms of Reference were agreed with Government, which required the Commission to make recommendations that would "promote transparency and fairness in the residential leasehold sector", and "provide a better deal for leaseholders as consumers".
- 1.6 The project did not include consideration of topics outside of the Commission's Terms of Reference, such as banning the creation of leasehold houses, the regulation of service charges, or restricting ground rents outside of the enfranchisement process. These, and other residential leasehold issues, are matters that Government has been independently considering. As they were not a part of the Commission's review it would not be appropriate for me to comment on them.
- 1.7 The Law Commission published detailed consultation papers, which were accompanied by shorter accessible summary papers. We held public consultation events around England and Wales, and received more than 1,800 responses to our consultations, as well as more than 1,600 responses to our leaseholder surveys. I would like to put on record my sincere thanks to all of those who engaged with the Law Commission throughout its work; their contributions were invaluable in the Commission's development of its final recommendations which, through this Bill, have the potential both to reform the law in this area and thereby to improve the lives of millions of homeowners.

### ***The Law Commission's 2020 reports***

- 1.8 After analysing consultation responses, the Commission published recommendations for wholesale reform of the enfranchisement, RTM, and commonhold regimes in detailed reports. Reflecting the breadth and complexity of these areas of law, the reports ran to a total of over 2,000 pages.
- 1.9 The Enfranchisement Valuation Report (“Valuation Report”) (January 2020) set out 15 options, in line with our Terms of Reference to “reduce the premium (price) payable by existing and future leaseholders to enfranchise, whilst ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests”.
- 1.10 The Enfranchisement Report (“Enfranchisement Report”) (July 2020) set out 102 recommendations for reform. We made recommendations for a new enfranchisement regime which would:
  - (1) reduce the legal and valuation costs involved in enfranchisement claims, and give leaseholders more control over those costs;
  - (2) make enfranchisement rights available to more leaseholders in more types of property; and
  - (3) make the enfranchisement process less complicated and protect leaseholders from procedural traps.
- 1.11 The Right to Manage Report (“RTM Report”) (July 2020) set out 101 recommendations for reform which would:
  - (1) reduce the costs involved in RTM claims, and give leaseholders more control over those costs;
  - (2) make the RTM available to more leaseholders in more types of property; and
  - (3) make the process of claiming the RTM less complicated and protect leaseholders from procedural traps.
- 1.12 The Commonhold Report (July 2020) set out 121 recommendations for reform to create a regime that is fit-for-purpose for all those interested in commonhold, whether that is because they wish to convert leasehold premises to a commonhold, are living in a commonhold, are building a new commonhold, or are lending in respect of a commonhold. The Commission’s recommendations would ensure that freehold ownership – and its benefits – are open to the owners of flats and other interdependent properties through commonhold.
- 1.13 The Law Commission’s recommended reforms, in combination with other reforms being considered and taken forward by Government, were intended to create fit-for-purpose home ownership by:
  - (1) paving the way for the future: laying the foundations for all homes (including flats) to be able to be owned as freehold; and
  - (2) essential reform of leasehold: addressing problems for leaseholders in the present.

- 1.14 The Law Commission's reforms were about providing leasehold homeowners with greater security in, and control over, their properties. The reforms were designed to make leaseholders' homes their own by placing the financial value of properties in their hands, rather than those of their landlords.

***The Leasehold and Freehold Reform Bill (the "Bill")***

- 1.15 Since publishing the reports, the Law Commission has been supporting Government, including helping Government to consider its recommendations and to develop those aspects of the Bill that implement its recommendations.
- 1.16 Following publication of any Law Commission report, it is for Government to choose which recommendations to implement and when to do so, should it decide to adopt them. In the Bill, Government has decided to implement various significant recommendations and options that the Commission set out in its Valuation Report, Enfranchisement Report and RTM Report.
- 1.17 Parts 1 and 2 of the Bill as introduced, together with related schedules, which comprise approximately two-thirds of the Bill, are devoted to implementing a subset of Law Commission recommendations that Government has chosen to implement: see Appendix 1.
- 1.18 Parts 3, 4 and 5 of the Bill implement Government's own policy and the Law Commission has no role in relation to those clauses.

***Key measures in the Bill relating to Law Commission recommendations***

- 1.19 The key measures in the Bill (as introduced) implementing Law Commission recommendations are as follows.
- (1) 990-year lease extensions: leaseholders of houses and flats will have a new and uniform right to a 990-year lease extension (up from the current 50- and 90-year extensions for houses and flats respectively) at a peppercorn ground rent, in exchange for the payment of a premium.
  - (2) Valuation: when leaseholders acquire their freehold or extend their lease, they must pay a premium to the freeholder. The amount of the premium depends on the circumstances, is uncertain, and requires input from valuers to calculate. The Bill creates a new uniform regime for calculating the premium under which:
    - (a) the premium will be set using a compulsory calculation in most cases;
    - (b) the calculation will use fixed figures ("prescribed rates"), removing the need for input from valuers to determine the rates used in each claim;
    - (c) the premium will exclude marriage value and hope value; and
    - (d) the calculation will ignore onerous ground rents (those that exceed 0.1% of the value of the property).
  - (3) Costs: leaseholders will no longer be required to pay the landlord's legal and valuation costs of an enfranchisement claim or costs of an RTM claim.

- (4) Litigation: all disputes between leaseholders and landlords about the exercise of enfranchisement and RTM rights will now be dealt with by the Tribunal, rather than being split between the Tribunal and the court.
- (5) 50% non-residential limit: leaseholders will be able to purchase the freehold of their block and make an RTM claim when up to 50% of the building is non-residential, up from the current 25% limit.
- (6) Two-year ownership requirement: leaseholders will be able to enfranchise immediately after acquiring their lease rather than having to wait two years, as they do now.
- (7) Leasebacks: when buying the freehold of a block, leaseholders will be able to require the freeholder to take a “leaseback” of flats and commercial units in the building, thereby reducing the premium that they have to pay.
- (8) Acquisition of intermediate leases: when buying the freehold of a block, leaseholders will have increased flexibility to decide which other leasehold interests they want to acquire (for example, leases of common parts, or intermediate leases in a chain of leases between the leaseholders and the freeholder).
- (9) Ground-rent buyouts: homeowners who already have very long leases will have a new right to buy out the ground rent under those leases (without also extending them or buying their freeholds) and replace it with a peppercorn rent.

1.20 I am delighted that Law Commission recommendations to reform residential leasehold are being implemented by the Bill. The time taken by the Commission to produce such lengthy reports, and detailed recommendations, demonstrates the breadth and complexity of this subject generally.

1.21 Reform of the different types of ownership of land becomes necessary as societies evolve and the ways in which people own and use land change. The recommendations the Law Commission has made and that are being introduced in this Bill have the potential to improve the lives of millions of people who own leasehold homes.

***January 2024.***

## Appendix 1: The Law Commission recommendations implemented by the Leasehold and Freehold Reform Bill (as introduced)

- 1.22 The table below identifies the Law Commission recommendations and options which are implemented by each clause (and relevant schedules) of the Bill as introduced. Numbers refer to the recommendation or valuation option in the corresponding report; for example, “Enf 29” refers to recommendation 29 in the Enfranchisement Report.
- 1.23 Where a recommendation or option is identified, it may only be implemented in part and the clause and/or schedule with which it is associated may also implement other material not arising from a recommendation or option set out by the Commission.
- 1.24 In addition, the Commission’s enfranchisement recommendations, in particular, anticipated the introduction of a new scheme which would have replaced existing schemes established in the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993. The decision by Government to implement a subset of those recommendations has resulted in those reforms instead being integrated into the two Acts and the recommendations as published should be read accordingly.

### Key

Val = Valuation Report, which set out options for reform

Enf = Enfranchisement Report, which set out recommendations for reform

RTM = RTM Report, which set out recommendations for reform

Bill clause	Law Commission recommendations / options implemented
<b><i>Part 1: leasehold enfranchisement and extension</i></b>	
1	Enf 29
2	Enf 1
3	Enf 38
4 (& Sch 1)	Enf 98
5	Enf 93, Enf 94, Enf 95, Enf 96, Enf 97
6	Enf 21
7	Enf 2
8	Enf 1
9	Val 1, Val 4, Val 7, Val 8, Val 12, Val 13
10	Val 1, Val 4, Val 7, Val 8, Val 12, Val 13, Enf 99
11 (& Sch 2 – 5)	Val 1, Val 4, Val 7, Val 8, Val 12, Val 13, [Valuation option

<b>Bill clause</b>	<b>Law Commission recommendations / options implemented</b>
	for reform in Enfranchisement Report] <sup>1</sup>
12	Enf 84, Enf 86, Enf 87, Enf 89, Enf 91
13	Enf 84, Enf 86, Enf 87, Enf 89, Enf 91
14	Enf 82
15	Enf 82
16	Enf 82
17	Enf 82
18	Supports Enf 82
19 (& Sch 6)	Enf 2
20	Val 15
<b>Part 2: other rights of long leaseholders</b>	
21 (& Sch 7)	Enf 3
22	RTM 7
23	RTM 68, RTM 85, RTM 86, RTM 87, RTM 90
24	RTM 84
25	Aligns with clause 18 for RTM
<b>Part 3: regulation of leasehold</b>	
<b>Part 4: regulation of estate management</b>	
<b>Part 5: rentcharges</b>	
26 – 59 (& Sch 8)	Not applicable: Government clauses
<b>Part 6: general</b>	
60 – 65	General clauses, applicable to the whole Bill

<sup>1</sup> The “[Valuation option for reform]” is an option (rather than a recommendation) to change the valuation scheme applying to intermediate leases that was made in the Enfranchisement Report. For more details see paragraphs 13.118 and following of the report.

## Appendix 2: Key Law Commission publications

Date	Document
<b>Consultation Papers</b>	
20 September 2018	<a href="#">Leasehold home ownership: buying your freehold or extending your lease</a>
10 December 2018	<a href="#">Reinvigorating commonhold: the alternative to leasehold ownership</a>
28 January 2019	<a href="#">Leasehold home ownership: exercising the right to manage</a>
<b>Reports</b>	
9 January 2020	<a href="#">Leasehold home ownership: buying your freehold or extending your lease - Report on options to reduce the price payable</a>
21 July 2020	<a href="#">Leasehold home ownership: buying your freehold or extending your lease</a>
21 July 2020	<a href="#">Reinvigorating commonhold: the alternative to leasehold ownership</a>
21 July 2020	<a href="#">Leasehold home ownership: exercising the right to manage</a>
<b>Other</b>	
19 July 2018	<a href="#">Leasehold enfranchisement: A summary of proposed solutions for leaseholders of houses</a>
21 July 2020	<a href="#">The future of home ownership</a>  (A summary of the reports published in July 2020, which is published both as a freestanding document and as the introductory chapter to all three of the Law Commission's July 2020 reports)

**Note:** numerous summary documents were prepared in respect of the project generally, the consultation papers and the reports, all of which are available on the Law Commission's website at <https://lawcom.gov.uk/project/residential-leasehold-and-commonhold/>.

**January 2024.**