

Written evidence submitted by Anthony Shamash (LFRB27)

Written evidence submitted by Anthony Shamash as director and owner of various ground rent investment companies including Covent Garden Ltd, Covent Garden GR Ltd, Covent Garden Four LLP, Midland Freeholds Ltd.

I am submitting this evidence very late in the day as I have only just become aware of the request for such. I am signed up to the government's email notification on leasehold, but I received nothing. That is very odd. This is consequently very rushed and badly written, I apologise.

I have been running these freehold ground rent investment companies for 31 years. I employ 4 people. Virtually all our income is from lease extensions and ground rent. If these proposals, together with some of the ground rent caps proposed, are enacted then my businesses will become insolvent. The freeholds that we own will no longer be managed, to the huge detriment of the leaseholders, and 4 people, plus myself, will be out of work.

The very idea that the cost of lease extensions / freehold purchases should be dramatically reduced is unreasoned - no one asked for it. The cost of a lease extension is built into the purchase price of the flat so leaseholders are not being penalised when they extend their leases. Under Mr Gove's proposals they would simply be gaining a windfall at the expense of the freeholders. Of course many freehold ground rents are owned by pension funds – supposedly for the benefit of hard working families, but they would now be penalised by reduced pensions.

The gift of all the marriage value (it is not an 'abolition of marriage value' as Mr Gove likes to say - it cannot be abolished, but it can be stolen and given to the other party) is clearly going to be challenged successfully at ECHR. It appears to be desperate vote buying without thought of future costs to the government.

I will now briefly discuss the worst points of this proposed legislation, as follows:

1. **Owner occupiers v property investors**
2. **Liability for costs**
3. **Limitation of variable service charges: insurance costs**
4. **Part 6 - 64 Commencement**
5. **Schedule 2—Determining and sharing the market value Part 5 – ground rent**
6. **'Simpler' valuation**
7. **Rates to be prescribed**
8. **Managing agents**
9. **Compatibility with the European Convention on Human Rights**
10. **Conclusion**

1. **Owner occupiers v property investors**

It is astonishing that these proposals make no distinction between owner occupiers and property investors. A considerable number of lessees are non-resident investors. Government research suggests 37% (Impact Assessment). We have many freeholds where all lessees are

investors, not owner occupiers. Approximately 45-50% of our total ground rent income and lease extension premiums are from property investors. A cap on ground rent or a reduction in the marriage value payable without compensation is robbing one class of investor to pay a windfall to another. To quote the government in their own introduction to the current leasehold consultation "people's homes are theirs to live in and enjoy, not designed as an income stream for third party investors". Having stated that, if the government then reduced ground rents, or lease extension premiums, for investors, they would be acting against their own beliefs. Clearly this would not be upheld at ECHR. Obviously transferring wealth from one set of property investors to another set of property investors is NOT in the 'general interest'. The government has to ensure that no investors benefit from any changes in leasehold legislation to the detriment of other investors (freeholders). Either compensation must be paid to freeholders, or investors excluded from any changes to ground rent or lease extension premium reductions.

2. Liability for costs:

19A Liability for costs associated with enfranchisement and extension claims

(1) A tenant is not liable for any costs incurred by any other person as a result of the tenant's claim to acquire a freehold or extended lease under this Part

This is unjustifiable. A freeholder is being forced to give up his property – he cannot be forced to pay the other party's costs as well. Currently they are paid for by the leaseholder and there is no reason for this to change.

3. Limitation of variable service charges: insurance costs

(1) Excluded insurance costs are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by a tenant.

A reasonable fee for arranging insurance must be allowed to the freeholder. We spend a huge amount of time organising the insurance and also dealing with claims. We often have to pay for the insurance before the leaseholders pay us as many are slow at paying. This runs into the tens of thousands of pounds annually. We charge 10% of the premium (before IPT) which does not cover our costs.

4. Part 6 - 64 Commencement

There must be a sensible period before the Act comes into force due to the complicated nature of the huge number of amendments. It cannot be expected that either a freeholder or a tenant would understand all the ramifications of the incredibly detailed changes until publication of an expert's guide, such as Hague.

5. Schedule 2—Determining and sharing the market value Part 5 – ground rent

The standard valuation method

23 (4) The “notional annual rent” for the lease being valued is an amount equivalent to 0.1% of the market value of the freehold of the property

This CANNOT be determined before the current proposals for ground rent ‘caps’ have been determined. It is astonishing that the government is carrying out a consultation paper on what to do with ground rents and, at the same time, elsewhere, have determined that they should be capped at 0.1% of freehold value. The setting of a cap here is premature. It is also grossly unfair to set it at 0.1% of the freehold value. In the introduction to the current leasehold consultation Mr Gove states that ‘For centuries, ground rents were typically small sums, even a peppercorn’ and uses this to say that modern ground rents are unfair and therefore must be reduced. This is not true. I own a large number of freeholds with leases granted in the 1960s and 1970s. The lowest ground rent that I can find from our 1960s stock is £12 pa. The property is in Mersham Road, Thornton Heath and is an average family flat. It sold at the commencement of the lease in 1965 for £1,000. I am happy to produce the lease as evidence (and many others). £12 pa is 1.2% of the purchase price, twelve times higher than the cap that Mr Gove is suggesting of 0.1%. So Mr Gove’s whole justification for reducing ground rents is fundamentally flawed – ground rents are now in fact significantly lower in real terms than they were in the 1960s. This of course will be shown at ECHR if required.

6. ‘Simpler’ valuation

For many years government has promised to make lease extensions ‘cheaper and simpler’ Currently the valuation of the ground rent is simple. The new proposal is this:

Lease subject to any other rent review

- 35 (1) This paragraph applies to a lease if—
- (a) the rent under the lease is subject to a rent review, and
 - (b) paragraph 34 does not apply to the lease.
- (2) The term value is determined using this formula:

$$\left(r_1 \times \frac{1 - \frac{1}{(1+c)^{n_1}}}{c} \right) + \left(\frac{r_2}{(1+c)^{n_1}} \times \frac{1 - \frac{1}{(1+c)^{n_2}}}{c} \right)$$

where—

- c is the applicable capitalisation rate;
- r_1 is the rent at the valuation date (but see sub-paragraph (6));
- r_2 is the rent after the first rent review following the valuation date (but see sub-paragraph (6));
- n_1 is the length (in years) of the period during which the rent at the valuation date will be payable;
- n_2 is the length (in years) of the period that begins with the first day of the first rent review following the valuation date and ends with the term date of the current lease.

How many leaseholders will understand this, it is absurd. The proposed Bill is 140 pages long. 140 pages to make something 'simpler'. Clearly this is madness and must be simplified.

7. Rates to be prescribed

The 'applicable capitalisation rate' must be set to reflect the medium term market rates used, and must be different for different reviews. I.e. 6% for no reviews down to 3.5% for regular reviews.

'The applicable deferment rate' must be set lower than Sportelli in order to compensate the freeholder for loss of his share of the marriage value (50% of Marriage value for leases under 80 years which was determined in the CLRA 2002 act – it was changed then and most certainly does not need changing again now) unless the government wishes to defend multiple cases at ECHR, or pay compensation.

8. Managing agents

Any legislation to improve the quality of managing agents is greatly supported. Bad managing agents, of which there are many, are the scourge of our industry – the costs to leaseholders, both financial and emotional, are enormous. Ground rent issues pale into insignificance compared to managing agent issues.

9. Compatibility with the European Convention on Human Rights

Mr Gove states "In my view the provisions of the Leasehold and Freehold Reform Bill are compatible with the Convention rights."

That's nice. But wishful thinking. Mr Gove has not been advised properly on the costs of the proposed legislation to freeholders. The Impact Assessment for the leasehold consultation is flooded in many ways.

Costs to freeholders of the loss in marriage value and the reduction in term value due to a cap of 0.1% on ground rent are immense – in an average case well over 50% of the current premiums. There is no way that this complies with Protocol 1 Article 1, as the government will discover if it continues as proposed.

10. Conclusion

In conclusion, I agree with the general proposal to make the leasehold system fairer for leaseholders, in particular with regulation of managing agents, but I strongly disagree with any changes to the existing valuation methods as all leaseholders buy their property knowing these terms, and those terms are reflected in the price that they paid. The changes proposed to the distribution of marriage value, and to the valuation of the ground rent at 0.1% are unjustifiable and, if enacted, must either be fully compensated for or will be challenged at the ECHR and will clearly be overturned, at huge cost to the government.

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