



[2025] EWHC 2751 (Admin)

Case No: AC-2024-LON-002817

AC-2024-LON-002830

AC-2024-LON-002865

AC-2024-LON-002875

AC-2024-LON-002904

AC-2024-LON-002913

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/10/2025

Before :

LORD JUSTICE HOLGATE
MR. JUSTICE FOXTON

Between :

THE KING (on the application of)

- (1) ARC TIME FREEHOLD INCOME
AUTHORISED FUND, A SUB-FUND OF ARC
TIME: FUNDS, ACTING THROUGH ITS
AUTHORISED CORPORATE DIRECTOR,
ALPHA REAL CAPITAL LLP & OTHERS [AC-
2024-LON-002865]
- (2) CADOGAN GROUP LIMITED &
GROSVENOR LIMITED & OTHERS [AC-2024-
LON-002875]
- (3) ABACUS LAND 1 (HOLDCO 1) LIMITED &
OTHERS [AC-2024-LON-002830]
- (4) WALLACE PARTNERSHIP GROUP LIMITED
& OTHERS [AC-2024-LON-002913]
- (5) JOHN LYON'S CHARITY [AC-2024-LON-
002817]
- (6) TRUSTEES OF THE PORTAL TRUST [AC-
2024-LON-002904]

Claimants

- and -

**THE SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**

Defendant

- and -

THE SPEAKER OF THE HOUSE OF COMMONS

Intervener

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Claimant
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Lovells International LLP) for the **Fourth Claimant**
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LLP) for the **Fifth Claimant**
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Claimant
Sir James Eadie KC, Richard Moules KC, Mark Loveday, Ellodie Gibbons, Hafsah
Masood, Hugh Flanagan, Charles Streeten, Saara Idelbi, Robyn Cunningham, Emma
Mockford, Katherine Elliot, Naomi Hart and Ruth Keating (instructed by **Government**
Legal Department) for the **Defendant**
Sarah Hannett KC and Katy Sheridan (instructed by **Office of Speaker's Counsel**) for the
Intervener

Hearing dates: 15, 16, 17 and 18 July 2025
Further written submissions: 9 August 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 24 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Holgate and Mr Justice Foxton :**1. Introduction**

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2. The claimants, who are owners of freehold and other reversionary interests of dwellings, and to whom we shall refer as “landlords”¹, ask the court to declare that amendments made by the Leasehold and Freehold Reform Act 2024 (“LFRA 2024”) to legislation for determining the sums a landlord will receive when a tenant under a long lease exercises a statutory right to enfranchise are incompatible with Article 1 of the First Protocol (“A1P1”) to the European Convention of Human Rights (“ECHR”). A1P1 provides:

“Protection of property

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general

¹ We generally adopt the language of the LRA 1967 which refers to a leaseholder as “tenant” and the grantor of a lease as “landlord”.

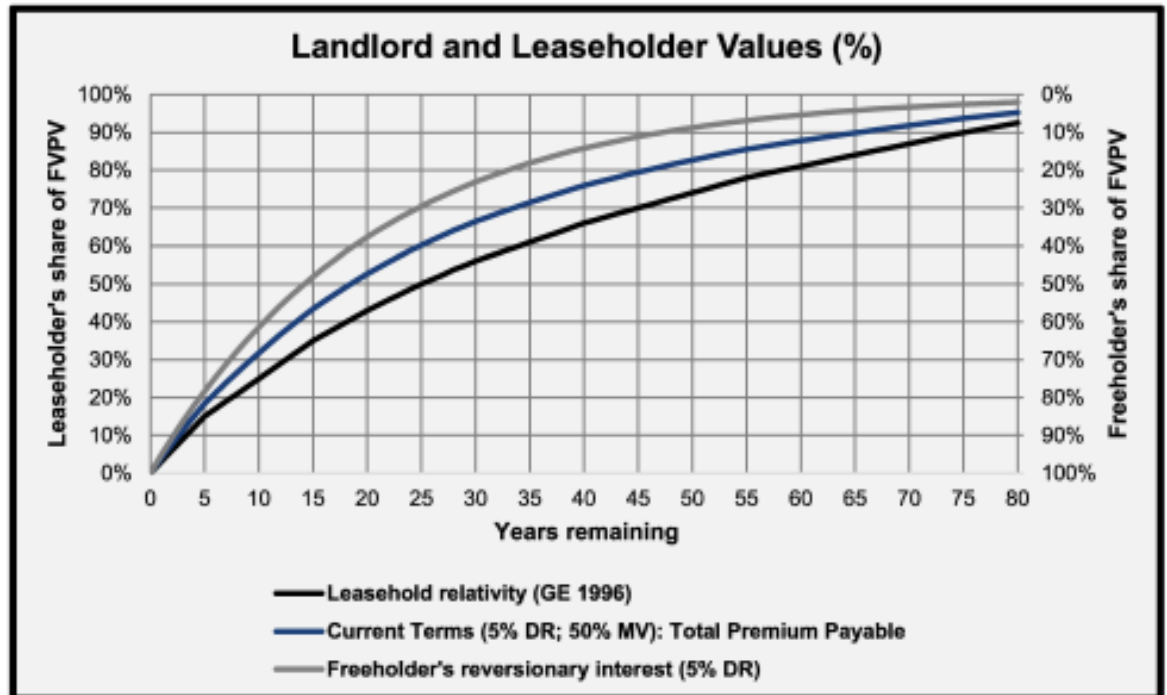
interest or to secure the payment of taxes or other contributions or penalties.”

3. In this introduction we outline the regime which was amended by the LFRA 2024. It is also necessary to refer to a previous A1P1 challenge and its outcome, because the issues in that litigation and the manner in which they were resolved remain highly relevant to these challenges to the latest chapter in the reform of that regime.
4. The Leasehold Reform Act 1967 (“LRA 1967”) conferred on tenants a right to enfranchise low value houses (i.e. houses where the rateable value was below a ceiling and where the rent was less than two thirds of the rateable value) held on a “long tenancy” (i.e. a term exceeding 21 years) and occupied as the tenant’s residence. A tenant became entitled to acquire the freehold reversion or a single 50 year extension to his lease on terms which the legislation described as “fair”. The LRA 1967 obliged the landlord to make the necessary grant.
5. Part of the rationale for the legislation was set out in the White Paper “Leasehold Reform in England and Wales” (Cmnd. 2916 – February 1966) (“the 1966 White Paper”). It was said to be unjust that at the end of the term ownership of the land and the house should revert to the freehold reversioner, together with any improvements made by the tenant or his predecessors, without the landlord paying anything to the tenant. Irrespective of whether the tenant had constructed the house under a building lease arrangement, he and his successors would have borne the costs of maintaining the property throughout the term, together with the costs of any improvements. The 1966 White Paper stated that such a tenant was morally entitled to the ownership of the building.
6. Consequently the LRA 1967 proceeded on the basis that “in equity” the land belonged to the landlord and the building to the tenant (para. 4 of the 1966 White Paper). Here the word “equity” expressed the legislature’s view as to what would be fair as between the parties, not a property law concept. So the LRA 1967 laid down a valuation formula so that the landlord would receive a purchase price based on the value of the land, subject to the tenant’s lease, but disregarding the value of the house situated on it.
7. The creation of a right to enfranchise was also intended to address other injustices faced by tenants because of the nature of a long lease as a wasting asset. Notwithstanding the substantial premium paid for the grant of the lease, its value declines eventually to nil upon expiration. As the residue of the term and its value declines, so potential purchasers find it difficult to obtain mortgage finance and the lease becomes more difficult to sell. We discuss the “wasting asset problem” in more detail below.
8. Section 9(1) of the LRA 1967 required the price for the enfranchisement to be that which the landlord’s reversion in the house might be expected to realise if sold by a willing seller in the open market on a number of specified assumptions. In 1969 the Lands Tribunal decided that this hypothetical sale, or valuation, would include a bid from the actual tenant. That bid would reflect the opportunity for the tenant to create “marriage value” through the merger of his interest with that of the landlord. For part of the duration of a tenant’s lease, the value of that lease and of the landlord’s reversion when merged in one ownership is worth more than the aggregate of the separate values of those two interests in different ownerships. In those circumstances, the tenant is expected to bid more than others in the market in order to obtain the uplift in value from

the marriage of his lease with the freehold reversion. In a straightforward case, the marriage value would be shared between the landlord and the tenant.

9. However, by s.82 of the Housing Act 1969 (“HA 1969”), Parliament inserted an additional assumption into the valuation formula in s.9(1) of the LRA 1967 that the tenant (and any family member living with him) would not buy or seek to buy the reversion. The object was to exclude marriage value from the price payable for enfranchisement under the original statutory scheme.
10. The Housing Act 1974 (“HA 1974”) extended the right to enfranchise by raising the rateable value limits. At the same time the valuation formula for the price payable to the landlord for those newly enfranchisable properties was amended (a) to reflect the value of the house as well as the land and (b) to include a bid from the actual tenant (so as to allow a share of any marriage value created to be awarded to the landlord).
11. In *James v United Kingdom* (1986) 8 EHRR 123 trustees for the Westminster estate made an application to the European Court of Human Rights (“ECtHR”) alleging that the compulsory enfranchisement of a number of properties under the LRA 1967 and the HA 1974, including the statutory basis upon which the reversionary interests were valued, violated A1P1. The application was rejected by the ECtHR. The fair balance test required by A1P1 was satisfied. The measures did not result in the placing of an excessive burden on the applicant.
12. By a series of statutes, the scope of the right to enfranchise was extended for houses and, for the first time, to flats. We summarise the key changes below. But in outline, the residential, low rent and rateable value tests have been removed over time. The Leasehold Reform, Housing and Urban Development Act 1993 (“LRHUDA 1993”) introduced for tenants of flats firstly, a right of collective enfranchisement to acquire the freehold of a building containing flats and secondly, in the alternative, an individual right to a lease extension of 90 years. The price payable to the landlord on the exercise of these extensions to enfranchisement rights has continued to be based on a hypothetical sale in the open market in which it is assumed that the actual tenant is able to bid, allowing the landlord to receive a share of any marriage value.
13. The Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”) made two changes to the assessment of marriage value for determining the enfranchisement price payable to the landlord. First, where the unexpired term of the tenant’s lease exceeds 80 years, marriage value is taken to be nil (s.146). It was considered that the merger of such a long lease with the freehold reversion would not generate any significant marriage value. Second, where the remaining term of a lease is 80 years or less, the marriage value is required to be shared equally between landlord and tenant (s.145).
14. The Cadogan and Grosvenor (“C&G”) claimants relied upon an expert valuer’s report by Mr Roberts. At para. 98(d) he introduced as Figure A the graph we reproduce below. The graph models the relative values of the tenant’s share of freehold vacant possession value (“FVPV”) (left vertical axis) and the landlord’s share of FVPV (right vertical axis) over the remaining term of a lease from 80 years down to expiration. The landlord’s reversionary interest increases from close to 0% of FVPV where there are 80 years of the term unexpired to 100% of that value by the time the term ends. On the other hand, the tenant’s interest declines from approaching 100% of FVPV where 80 years of the term remains unexpired down to 0% of that value by the time the term ends.

Mr Roberts says that the impact of marriage value is strongest between 20 and 45 years unexpired, peaking at slightly above 30 years (para. 98(d)).



15. Leaving aside those cases which fall within the original ambit of the LRA 1967 and to which the original valuation formula still applies, the price payable to the landlord for enfranchisement has generally been the aggregate of the following three components:

(1) *“Reversion value”*

This is the market value of the future right to vacant possession at the end of the term. This net present value (“NPV”) is arrived at by discounting the current FVPV by a deferment rate for the unexpired period of the term;

(2) *“Term value”*

This is the market value of the landlord’s right to receive the rent due under the lease (including any contractual increases in rent) for the unexpired term. The NPV of that right is arrived at by applying a capitalisation rate to that rental stream;

(3) *Marriage value*

Taking a house as an example, the marriage value is arrived at by deducting from the current FVPV of the house (a) the value of the landlord’s present interest in the property (i.e. the reversion value and the term value) and (b) the value of the lease (as if there were no enfranchisement rights). The difference is the marriage value, half of which is then included in the enfranchisement price payable to the landlord.

16. In December 2017 the Government published a report “Tackling unfair practices in the leasehold market – Summary of Consultation responses and Government response”. The Government said that it would work with the Law Commission on a wider

programme of reform. This would include making it easier and cheaper for all tenants to enfranchise, whether buying a freehold or extending a lease. The Law Commission produced three substantial reports on the subject between 2018 and 2020. Both the Commission and Government carried out substantial consultations, following which a Bill was introduced in the House of Commons on 27 November 2023. The LFRA 2024 received Royal Assent on 24 May 2024. We summarise the events which culminated in the passing of the LFRA 2024 at [194]-[278] below.

17. The CLRA 2002 also introduced commonhold as an alternative form of ownership of flats to leasehold. However, only about 20 commonholds had been formed by 2018. Consequently the Law Commission and Government have also been considering how commonhold can be “reinvigorated” through a series of reports and consultations which took place in parallel with the process for reforming leasehold enfranchisement.
18. There are before the court six claims for judicial review brought by substantial landlords, which are described briefly in [32]-[48] below. Although there are differences in the relief sought by individual claimants, taken as a whole, they seek a declaration under s.4 of the Human Rights Act (“HRA”) 1998 that the following three measures of the LFRA 2024 dealing with the amounts payable to landlords on enfranchisement are incompatible with A1P1 as enacted in the HRA 1998:
 - (1) A cap on the amount of the rent payable under a lease which can be taken into account in arriving at the landlord’s term value, namely 0.1% of the FVPV of the property at the valuation date for the claim to enfranchise (para.26 of Sched.4 to the LFRA 2024);
 - (2) An assumption that the tenant claiming enfranchisement is not seeking and will never seek to acquire the freehold or a lease extension, as the case may be, so that no marriage value or hope value will be payable to the landlord as part of the enfranchisement price (para.17(3) of sched.4 to the LFRA 2024).
 - (3) Sections 38 and 39 of the LFRA 2024 which repeal provisions in the LRA 1967 and the LRHUDA 1993 imposing a liability on an enfranchising tenant to pay the landlord’s non-litigation costs, for example, the costs of investigating an entitlement to enfranchise, a valuation of the property and conveyancing costs.
19. The three measures which the claimants seek to challenge have not yet been brought into force. In part, this is because the LFRA 2024 also authorises the prescription of the deferment and capitalisation rates which are essential to the valuation method summarised in [15] above. The claimants raise no objection in the current proceedings to the legislation which provides for those rates to be prescribed.
20. The parties have helpfully agreed the issues which they ask the court to determine. When we set out those issues below, we will also identify which issues are pursued by each party and the declarations of incompatibility (“DoI”) sought ([49]-[52] and Annex 2 below). We are also asked to make a cumulative assessment as to whether measures (1), (2) and/or (3) in [18] above are jointly incompatible with A1P1.
21. We are grateful to the claimants and their legal teams for the way in which they co-operated in the preparation of a number of Agreed Statements and the presentation of their submissions, both written and oral. In order to avoid duplication they divided the

issues between them and adopted the submissions of each other as appropriate. We are also grateful to counsel for all parties for their helpful submissions. Nonetheless, we are conscious that this is a long judgment, reflecting the number of issues and volume of materials we were asked to consider. While we address a number of matters of general relevance in the early sections of the judgment, we have also sought to ensure that the sections addressing the three principal complaints can be read on a largely self-contained basis, without too much cross-referring to sections appearing elsewhere. This has involved a degree of repetition, although we have sought to minimise this. We attach a table of abbreviations used in this judgment at Annex 1.

22. Section 33 of the LFRA 2024 amends the LRA 1967 and the LRHUDA 1993 so that a tenant entitled to make a claim to enfranchise can obtain a lease extension of 990 years, rather than 90 years, at a peppercorn rent. Sir James Eadie KC accepted on behalf of the defendant that because the grant of a lease of such length is tantamount to a transfer of the freehold, the exercise of that new right to enfranchise in respect of a flat would amount to a deprivation of the landlord's possession (the freehold reversion) for the purposes of A1P1, as in the case of a claim by the tenant of a house to acquire his landlord's freehold reversion. However, the claimants do not seek a DoI specifically in relation to the new entitlement of a tenant to obtain a 990 year extension of his lease.
23. The claimants do not seek a DoI in relation to the other rights to enfranchise (acquisition of the freehold or collective enfranchisement), on the basis that under the LFRA 2024 they are exercisable in more instances than in 1967 or 1974 as the result of the progressive relaxation of the qualifications for enfranchisement.
24. Likewise, the claimants do not seek a DoI in relation to s.27 of the LFRA 2024. That provision amends the LRA 1967 and the LRHUDA 1993 so as to remove the requirement that a tenant of a house or flat must have owned his or her lease for at least 2 years before qualifying to make a claim for enfranchisement.
25. Nevertheless, the claimants make an additional point that because the LFRA 2024 is likely to increase the number of instances in which a right to enfranchise will be exercised, the adverse effects on landlords of the three measures referred to in [18] above will be greater. The claimants also point to two amendments by the LFRA 2024 to the scheme for collective enfranchisement which are said to increase the adverse impact of the reforms on landlords and which should therefore be taken into account when assessing the merits of the claims for DoIs regarding the impugned measures:
 - (1) Collective enfranchisement is not available where the proportion of a building's internal floorspace (excluding common parts) used for non-residential purposes exceeds a ceiling. Originally the ceiling under the LRHUDA 1993 was set at 10%. The CLRA 2002 increased that figure to 25%. Section 29 of the LFRA 2024 increases the ceiling to 50%;
 - (2) Section 32 of the LFRA 2024 enables the tenants of units participating in a collective enfranchisement to require the landlord to take a 999 year leaseback of non-participating units, thereby reducing the price payable for the freehold.
26. It is common ground that the measures under challenge will result in considerable reductions in the sums payable by enfranchising tenants to their landlords. The Government produced an Impact Assessment of the Bill in October 2023 ("the IA")

which was published on 11 December 2023 and provided to Parliament. After the LFRA 2024 was enacted, errors were discovered in part of that work and the Government produced an Addendum to the IA on 14 April 2025 (“the Addendum IA”). Even so, the claimants say that a number of the estimates of future loss for landlords are still too low. They produce some higher figures. The parties acknowledge that it is not possible for the court in these proceedings for judicial review to resolve the differences between those estimates. They have also accepted that it is unnecessary for the court to do so in order to determine the issues on incompatibility with A1P1 raised by the claims.

27. To summarise:

- (1) None of the claimants seek a DoI in relation to the ambit of the rights to enfranchise, taking into account amendments made by the LFRA 2024;
- (2) DoIs are sought solely in relation to the three measures of the LFRA 2024 referred to in [18] above dealing with the amounts payable upon the deprivation of a landlord’s reversionary interest in a dwelling (including the obligation to grant a 990 year lease);
- (3) One of the three components of the market value of the landlord’s interest, the reversion value, remains untouched by the LFRA 2024;
- (4) The term value remains payable to landlords, but will be subject to a cap that the ground rent capitalised should not exceed 0.1% of FVPV. Where a ground rent does not exceed that level, the LFRA 2024 leaves untouched the assessment of the term value payable to a landlord ;
- (5) Landlords will cease to receive the third component of the purchase price, namely 50% of marriage value where 80 years or less of the term remains unexpired. In effect the whole of any such value, created by a tenant’s exercise of the right to enfranchise, inures to that tenant;
- (6) The landlord’s entitlement to be paid non-litigation costs will be abolished.

28. However, it should also be borne in mind that a ground rent is not a full rack rent (i.e. a rent which represents the full open market value of the dwelling). Indeed, in many cases a ground rent may only be a peppercorn or a nominal sum. Ground rent is payable during the term of the lease in addition to (a) the capital sum, the premium, paid to the landlord when the lease was granted or (b) the costs of erecting a dwelling incurred by a tenant under a building lease. Such leases have commonly been granted by landlords such as the C&G claimants (see the explanation by the ECtHR in *James* at [11]-[12] and [27]). The LFRA 2024 does not remove or affect the value received by the landlord upon the grant of a lease, in the form of the premium paid or the erection of a dwelling, by the tenant or a predecessor in title.

29. There is an issue between the parties as to what are the aims of the measures under challenge. In a nutshell, the claimants say that the measures were intended to make it easier and cheaper for tenants to buy the freehold or obtain a lease extension for the homes in which they live and not for people or institutions owning homes as an investment in the private rental sector. They submit that because the measures benefit

tenants in general, rather than simply leasehold occupiers of homes, they are not rationally connected with the true aim of the measures. Alternatively, if the aims of the measures were to benefit tenants in general, the claimants say that it was not legitimate for Parliament to enact measures that have the effect of transferring substantial parts of the market value of freehold reversions of dwellings belonging to investors to other investors in residential long leases, alternatively not to have reduced the scale of that transfer of value.

30. The claimants sometimes appeared to suggest that the three measures in [18] above represent an interference with an expectation that, pursuant to existing enfranchisement legislation, landlords would continue to receive marriage value, the full NPV of the contractual right to future ground rent (without any cap) and their non-litigation costs. Those submissions appeared to treat the property right in issue in this case as the existing statutory right to compensation, rather than the reversionary interest itself, and may in part reflect the manner in which the market in freeholds has developed since leasehold enfranchisement legislation was first brought forward, which we outline at [39]-[46] below. But the alteration of such expectations by the LFRA 2024 could not represent a “deprivation” of “possessions” belonging to landlords within the meaning of A1P1. Instead, the three measures summarised in [18] have simply altered the compensation payable to a landlord where a tenant exercises a right to enfranchise. If that were not so, the analysis would become circular: landlords would argue that a fair proportionality balance satisfying A1P1 required that they be compensated for the removal or reduction of those elements of compensation. But compensation for the deprivation of a possession, the freehold reversion, is not to be confused with that possession.
31. Fortunately in the final analysis none of the claimants fell into that trap. Subject to issues about the aims of the three measures under challenge (see [29] above), it is common ground that the central issue for the court to determine is whether the alterations made by those measures to the sums receivable by landlords for enfranchisement have resulted in the proportionality balance under A1P1 becoming unfair.

2 The parties

32. There are six claimant groups.
33. The ARC claimants are 51 companies or funds in four distinct groups:
- i) The ARC TIME Freehold Income Authorised Fund (“FIAF”) claimants, a UK registered investment fund established in 1993. Investors in FIAF largely comprise investors through SIPP and ISAs, charities and small company pension schemes, with the primary investment of the fund (83%) being in residential freeholds for the purpose of receiving residential ground rents in the UK. The freeholds were acquired on a secondary basis, after the properties had been developed. The portfolio comprises 12,500 houses and 35,000 flats. 33.6% of its properties are in London.
 - ii) The PUKGLF and PUKResGLF claimant groups. These are Jersey registered companies which are the corporate trustees or nominee companies for Jersey unit trusts and sub-unit trusts ultimately managed by PGIM Private Alternatives

(UK) Ltd. The investors in those trusts are a mix of government and corporate pension schemes. The PUKGLF portfolio consists of 3,707 UK units (46% in the South East), consisting of 3,403 units of retirement apartments and 304 units of holiday homes within the Cotswold Water Park estate, all of which were acquired on a secondary basis (i.e. they were not the original grantee of the lease). The PUKResGLF portfolio consists of 16,000 residential units across the UK (83.5% in London), including 78 houses, with the rest being apartments, all of which were acquired on a secondary basis.

- iii) The GRIF claimant group comprising 38 UK registered companies. Which together constitute a registered and a closed-ended real estate investment trust and the ultimate owner of a portfolio of freeholds and long leases acquired on a secondary basis. The portfolio comprises approximately 19,000 units nationwide, comprising 14,000 apartments; 3,000 houses; 2,000 student accommodation units; and 350 commercial units.

34. The C&G claimants are among the London “Great Estates”:

- i) Cadogan is a family business which has spanned 300 years to date, and which owns and manages a mixed-use portfolio of property in Chelsea, comprising mainly retail, residential and office property. Retail properties (by value) comprise 50% of the portfolio, residential properties comprise approximately 25.3% and the remainder is predominantly comprised of offices and hotels. Like Grosvenor, Cadogan sees an important aspect of its role to be the stewardship of its estate;
- ii) Grosvenor owns and manages a portfolio of property, comprising mainly retail, residential and office property in London's West End (where its “heartland” is located) and across the UK. It forms part of an international organisation with wide-ranging activities. 30% of its UK property portfolio comprises residential property.

35. The Abacus claimants are based in the UK, Jersey or Guernsey and collectively hold and maintain freehold investments comprising approximately 200,000 houses and flats, located across England and Wales. Abacus estimated the total value of its portfolio in March 2024 to be £2.25bn. They estimate that the three measures under challenge would result in that value decreasing by £147m. The Abacus claimants provide an investment vehicle for UK-based pension funds and life insurance companies who face long-dated liabilities, and are attracted by investments in assets offering long-term income streams.

36. The Wallace claimants comprise Wallace Partnership Group Limited and its 16 property-owning subsidiaries which own and manage approximately 102,000 freehold and leasehold properties throughout England and Wales. The Wallace Group is itself a subsidiary of Albanwise Wallace Estates Limited, a diversified UK investment group focusing on agriculture, property and conservation, ultimately owned by the Padulli family trust. Wallace has issued loan notes to pension funds which are secured against the future income streams from its property portfolio, and which it funds from ground rent and enfranchisement premiums.

37. John Lyon's Charity and its permanent endowment are constituted on the basis of a 16th century Royal Charter, its endowment derived from conveyances in 1578 and 1581 when the original land in St John's Wood was acquired. For over 400 years, the income from that estate was applied to various local authorities that were responsible for the upkeep of what are now the Edgware and Harrow Roads. In 1991, the trustees were given a discretion to apply the income for charitable purposes for the benefit of inhabitants of the boroughs of Barnet, Brent, Camden, Ealing, Hammersmith and Fulham, Kensington & Chelsea and the Cities of London and Westminster. The Charity seeks to transform the lives of children and young people by creating opportunities to learn, grow and develop through education, and since 1991 it has distributed over £208 million in grants to a range of organisations that promote the life chances of children and young people. The Charity is able to spend income generated but cannot diminish the value of its endowment and it operates a 'total return policy' which enables it to use 3.5% of the average of the past four year's total asset base to expend on operating costs and grants.
38. Finally, the Portal Trust was established as a charitable foundation (originally known as the Sir John Cass Foundation) in 1748, with an endowment which includes significant land and buildings in Hackney ("the Hackney Estate"). In the 19th century, the Portal Trust developed the Hackney Estate in order to fund its charitable activities, creating a suburban community of homes and commercial spaces which it managed until 1976. The principal object of the charity is now the promotion of the education of disadvantaged young people resident in fourteen London boroughs. In 1976 the Portal Trust granted two 99-year leases which extended to the whole of the Hackney Estate to a company now known as Sanctuary Housing Association (or "SHA"), which is a charity and a registered provider of social housing. The Hackney Estate now comprises 841 residential properties and 14 commercial properties.
39. The different classes of claimants in the litigation reflect a number of ways in which the identity of landlords, or the purposes for which reversionary interests are acquired and held, has changed since the first significant statutory intervention in this area in 1967, in some cases in response to economic opportunities which have been enhanced by rights of enfranchisement.
40. Taking ground rents first, there is some suggestion in the materials that for some time, these had, to a significant extent, been set at low and static levels (see for example, [5.50] of the Law Commission Consultation Paper No.238 of 20 September 2018. "Leasehold Home Ownership: Buying Your Freehold or Extending Your Lease" ("the Consultation Paper")). One expert suggested that the LRA 1967 may have helped bring new insight into the economic opportunities ground rents presented, with ground rents being increased as part of an attempt to ensure houses did not qualify for enfranchisement, and being seen to create a significant income stream in the process.
41. More substantively, the material before us lends strong support for the suggestion that over the last 20-25 years, ground rents have come to be seen as a desirable asset class by certain classes of institutional investor. This development prompted a concentration of freehold ownership. It also encouraged some developers to sell leases of new houses and flats with increasing ground rents favourable to the landlord, so as to create assets for which there would be demand from institutional investors. The material suggests that one motive for creating revenue streams of this nature, rather than selling property

on a freehold basis (or commonhold), was that the leasehold price and present value (“PV”) of the revenue stream sold would exceed the freehold price in the market.

42. The Department for Levelling Up, Housing and Communities (“DLUHC”) consultation paper “Modern leasehold: restricting ground rent for existing leases” of 8 December 2023 stated at [1.18] that:

“institutions (such as pension funds) have become involved in the residential ground rent market over the last 20 years, either through lending against a residential portfolio owned by a freeholder or directly investing and becoming the freeholder themselves. Investors put a proportion of their assets in very secure, long-dated, inflation-linked income streams which will, over that long term give them sufficient return to meet their financial obligations elsewhere.”

The DLUHC noted that “increased involvement from investors in the ground rent market” had been accompanied by the more frequent use of inflation-linked ground rent provisions, the value of which had grown considerably in the market for freeholds since 2007. At [1.19], the report referred to surveys conducted by the Investment Property Forum of 42 institutional investors. In 2012, ten respondents owned ground rents worth £137m. Two years later, eight respondents owned ground rents worth £1.5bn, and the following year, they held ground rents worth £1.9bn. The Residential Freehold Association has estimated that there is a total investment in residential reversions of £30bn, of which £15bn is held by pension funds (see also para.3.2.3 of the first witness statement of Ms Colton filed by the ARC claimants and para. 17 of the first witness statement of Mr Platt a senior executive in the Wallace Group). To provide context for those figures, *R (BT Pension Scheme Trustees Ltd) v UK Statistics Authority* [2022] EWHC 2265 (Admin); [2023] Pens. L.R. 1 refers at [120] to evidence in that case that assets managed by institutional investors, including pension funds, so as to match their liabilities amounted to £1.2 trillion in 2018. Generally liability-driven investment has relied upon index-linked gilts.

43. The statistics provided to us suggest that around 52% of the 950,000 freehold titles in England and Wales are held by private individuals, around 38% by companies and around 11% by others, such as housing associations, developers, and the public sector. It has been estimated that these 950,000 freeholds are owned by around 426,000 freeholders.
44. That concentration of ground rent ownership (certainly by value) means that the aggregate financial impact of the LFRA 2024 on particular freeholders, such as many of the claimant groups, will be extensive. However, when reviewing the evidence as to that impact, it is important to keep in mind two points. First, the overall figures represent the accumulation of a substantial number of “per leasehold” figures. Second, the effect of the impact depends also on the size of the overall investment by a landlord in both reversionary interests and other types of asset, and also the percentage reduction in that investment, on which the information before the court is relatively incomplete.
45. A particular feature of the emergence of freeholds as a popular asset class was the increasing use of leasehold for housing estates by many developers simply for the purpose of generating a marketable income stream, rather than because some feature of

the development necessitated use of the leasehold model: see for example the Ministerial Foreword to the Department for Communities and Local Government Consultation Response, “Tackling unfair practices in the leasehold market – a consultation paper” (published in December 2017) which noted:

“Over the past 20 years, the proportion of new-build houses sold as leasehold has more than doubled. Huge numbers of properties – including standalone houses with no shared facilities or fabric – are being sold as leasehold simply to create a reliable revenue stream for whoever owns the freehold. In some parts of the country it’s now almost impossible for a first-time buyer to purchase a new-build home on any other basis”.

46. The attraction of freeholds as an asset class is not limited to the receipt of ground rents. Evidence from Mr Platt was that one attractive feature of such investments was “the prospect of enfranchisement premiums provides a potential for capital receipts in future”. One of the four freehold portfolios owned by the Wallace Group contains “leases of flats and houses that are all shorter in length (less than 100 years) and therefore generate significant income by way of lease extensions and freehold enfranchisements year-on-year” (para. 52 of his first witness statement). Mr Platt explains that “it is generally possible for Wallace to estimate, with a reasonable degree of accuracy, approximately how many leases are likely to be subject to applications to be extended and/or enfranchised in a given year, and therefore to estimate the year-on-year income generated by Wallace’s property portfolios” (para.55).
47. For John Lyon’s Charity, too, the regular receipt of enfranchisement premia forms part of its intended and anticipated income stream which is used to fund its very worthwhile and carefully targeted charitable spending. Dr Lynn Guyton, Chief Executive of the charity, gave evidence that the charity “derives a significant part of the capital required for our charitable giving from enfranchisement premiums”, with the charity working on the basis that there will be 1 to 3 large enfranchisements a year.
48. Another notable feature of most of the claimants was the extent to which their freehold interests were concentrated in London, and in those parts of London referred to by valuers as “Prime Central London” (“PCL”) where property values are particularly high. London has a particular concentration of leasehold property, both in terms of numbers of properties and (particularly) in aggregate value. There was evidence before us which suggested that 15% of the total leasehold dwellings (houses and flats), and 35% of flats, are in London. However, 68% of flat value transfer is located there. We have been told that 14% of all leasehold flats in London are to be found in three boroughs (Westminster, Kensington and Chelsea, and Camden), with 47% of the potential “marriage value” on London flats in those three boroughs, and 32% of the figure for England as a whole. Those particular features of the London property market featured in the consideration given to leasehold enfranchisement in the run up to the LFRA 2024, but we have kept in mind at all times that the challenges have been brought to a statute which applies throughout the country, with the clear majority of freeholds affected being found outside London.

3 The issues raised by the parties

49. The parties helpfully agreed a list of the substantive issues raised by the claims which we reproduce below. We identify the claimants pursuing each issue:
- (1) **Aims:** what are the aims of the three measures in the LFRA 2024 under challenge (ARC, C&G, Abacus, Wallace, John Lyon's and Portal).
 - (2) **Marriage value (generally):** Whether the exclusion of 'marriage value' from enfranchisement premiums, by s.37 and Sch. 4, para.17(3) of the LFRA 2024, is incompatible with A1P1 (ARC, C&G, Abacus, Wallace, John Lyon's Charity and Portal).
 - (3) **Marriage value as regards charities:** Whether the exclusion of 'marriage value' from enfranchisement premiums, by s.37 and Sch. 4, para.17(3) of the LFRA 2024, is incompatible with A1P1 insofar as it contains no exception(s) for charities (John Lyon's Charity and Portal).
 - (4) **Cap on ground rents:** Whether the introduction of a cap on existing ground rents in enfranchisement calculations at 0.1% of the FVPV, by s.37 and Sch. 4, para.26(4) of the LFRA 2024, is incompatible with A1P1 (ARC, C&G, Abacus, Wallace and Portal).
 - (5) **Recovery by landlords of non-litigation-costs:** Whether the abolition of the statutory right for freeholders and any intermediate superior landlords to recover from tenants the reasonable non-litigation costs that the freeholders and superior landlords incur on enfranchisement and lease extension claims (subject to specified exceptions), by ss.38 and 39 of the LFRA 2024, is incompatible with A1P1 (ARC, Abacus and Portal).
 - (6) **Cumulative effects:** whether the measures at (2), (4) and/or (5) above, as impugned by each claim, are jointly incompatible with A1P1 (ARC, C&G, Abacus, Wallace and Portal). In determining issues (2), (4), (5) and/or (6), as impugned by each claim, the claimants say that these issues must be judged in the light of the cumulative changes to the nature and scope of the leaseholders who may benefit from enfranchisement rights, and on what terms, as effected by successive Acts post the LRA 1967 up to and including ss. 29 and 32 of the LFRA 2024.
 - (7) **Exceptions:** Whether each of the measures at (2) and (4) above is incompatible with A1P1 and/or Art 14 taken together with A1P1 insofar as they contain no exception(s) (a) for charities or (b) to exclude from the new valuation regime arrangements of the kind that Portal has with SHA where the lessee is not a homeowner or consumer but holds their interest for business purposes (Portal).
 - (8) **Standing:** Whether the Portal Trust has standing to bring its claim.
50. By the time of the hearing before us, the defendant was no longer raising an issue as to Portal's standing to bring its claim and so the court need not consider that matter.
51. We attach to this judgment as Annex 2 the drafts of the DoIs sought by the claimants reflecting the issues set out above.

52. Abacus also challenged para.17(2) of sched.4 to the LFRA 2024 which deals with intermediate leases. In response, the Government has agreed that there is a loophole which needs to be corrected by primary legislation. On 16 June 2025 the court made a consent order staying that part of the claim brought by Abacus.

4 The statutory framework

The legislative history

53. Both sides relied extensively on the conclusions which it was said were to be drawn from the history of leasehold enfranchisement legislation in England and Wales. We have summarised that history in the introductory section, and provide a fuller account now, before explaining the changes effected by the LFRA 2024.
54. It was common ground between the parties in an Agreed Statement that the evolution of the legislation in this area was correctly summarised by the Law Commission at [2.3]-[2.5.2] of its Consultation Paper. This section of the judgment draws extensively on that summary.
55. While the issue of leasehold reform had generated much debate since the latter part of the nineteenth century, the first general intervention was the LRA 1967 in relation to leaseholds of houses. The LRA 1967 followed the 1966 White Paper which made it clear that the reform was intended to remedy what was perceived to be the unfair operation of the existing law from the perspective of the occupying tenant. The 1966 White Paper noted (in para. 1) that while the landlord had provided the land, in the majority of cases, it was the tenant or its predecessor in title who had constructed the property (which appears to be a reference to building or development leases). Whether or not that was so, it was “the lessee and his predecessors who have borne the cost of improvements and maintenance”. The Government’s view was that it was “quite indefensible” for the landlord to acquire ownership of the house at the end of the term without paying anything for it. The basic principle of the reform was that “the freeholder owns the land and the occupying leaseholder is morally entitled to the ownership of the building which has been put on and maintained on the land.” While those comments, and the resultant legislation, were concerned with the position of the occupying tenant, they identified issues in the model of leasehold real property interests of potentially wider application. For example, para. 3 stated:
- “Two circumstances make reform a matter of urgency. First, most people buy their house on mortgage and for them the leasehold system works particularly harshly. A purchaser on mortgage may pay virtually the freehold price for a lease with a good many years to run but as he reaches the end of his mortgage term he will feel a sharpening sense of injustice. He will realise that after he has discharged the mortgage he will have an interest far less valuable than it was when he bought it, and difficult to sell because a subsequent purchaser may not be able to get a mortgage.”
56. The LRA 1967 only applied to houses (not flats) and only to houses below a certain value as determined by the application of the “low rent test” and other limits based on the rateable value of the house. There was also a requirement that the house had been

occupied by the party seeking to enfranchise as their sole or main residence. The LRA 1967 created two rights of enfranchisement:

- i) A right to acquire the freehold on payment of a price to be determined in accordance with s.9 of the LRA 1967. This was “the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise” on a number of assumptions, including that the sale was subject to the tenancy as capable of being extended under the LRA 1967. The valuation formula effectively limited the landlord to compensation for the value of the site and not the building;
- ii) The right to extend the lease for a single period of 50 years, but at a “modern ground rent” representing the letting value of the site, but not the building.

In each case, the enfranchising tenant was to pay the reasonable non-litigation costs of effecting the enfranchisement.

57. In determining the market value for the freehold, the LRA 1967 was silent on the question of whether the tenant was to be assumed to be a competitor in that market, so that the open market price would reflect some part of any marriage value. Two decisions of the Lands Tribunal held that such an assumption was indeed to be made under the LRA 1967 (*Custins v Hearts of Oak Benefit Society* (1969) 209 EG 239 and *Haw v Peek* (1969) 2010 EG 347). Those decisions were reversed by the HA 1969 which excluded from the hypothetical market in which “open market value” was to be assessed “the tenant and members of his family residing in the house”. Tenants who fall within the original ambit of the LRA 1967 do not have to pay anything in respect of marriage value as part of the landlord’s compensation.
58. The next legislative intervention in this area was the HA 1974 which:
 - i) increased the value limits which determined whether rights of enfranchisement under the LRA 1967 would be available; and
 - ii) for enfranchising tenants benefiting from those increased value limits, amended the basis for the landlord’s compensation to include the tenant’s bid (so the issue of whether marriage value was a relevant element in the calculation of the enfranchisement premium depended on whether the dwelling met the original low value limits in the LRA 1967);
 - iii) for those same tenants, no longer sought to limit the landlord’s compensation to site value.
59. The LRA 1967, the HA 1969 and the HA 1974 together set out the applicable UK legislative regime for leasehold enfranchisement when the ECtHR determined the challenge to that legislation brought by certain landlords in *James*.
60. A statutory right of leasehold enfranchisement in relation to flats, rather than houses, raised greater complications, because a single freehold reversion would relate to a number of different flats, with each tenant having a shared concern in issues such as the insurance and maintenance of common parts and the external structure. A right of leasehold enfranchisement for flats was first introduced by the LRHUDA 1993. That

Act was passed against a backdrop of additional concerns relating to the “split” ownership model between freehold reversioners and tenants. For example, it left landlords in control of certain management functions, the costs and consequences of which were borne by tenants through the mechanism of service charges.

61. But there was a more general concern about the structure of leasehold ownership which led to proposals for a new form of tenure, commonhold. There is a helpful summary of the evolution of those proposals in Hague: Leasehold Enfranchisement (7th edition) at paras.1-11 to 1-12. The Law Commission produced a report in 1987. That was followed by a consultation by Government which referred to what were seen as inherent problems in the leasehold system, namely the bias in the relationship of landlord and tenant in favour of the former and the nature of a lease as a wasting asset.
62. In its response to the consultation (July 1991) the Government introduced proposals for “collective enfranchisement”, that is a right for the tenants of a block of flats acting collectively to acquire the freehold of the building and to take over responsibility for management functions. This was seen as a first step towards commonhold and became the focus of the next legislative intervention.
63. The LRHUDA 1993 made the following changes:
 - i) It created a right of collective enfranchisement for tenants in a block of flats, provided certain qualifying requirements were met. These included (a) at least two-thirds of the tenants in the block had leases of over 21 years at a low rent; (b) no more than 10% of the floorspace of the building (excluding common parts) was used for non-residential purposes; (c) not less than one-half of flat owners and two-thirds of qualifying tenants participated in the claim; and (d) participating tenants had to satisfy a residence test;
 - ii) It gave individual qualifying tenants meeting the residence test the right to extend their lease by 90 years;
 - iii) It adjusted the financial restrictions on lease enfranchisement imposed by the LRA 1967 and removed those imposed by the HA 1974.
64. There are two features of the LRHUDA 1993 which should be highlighted at this point, one relied upon by the claimants, and the other by the Secretary of State:
 - i) The amount payable to exercise rights of enfranchisement allowed the landlord to obtain compensation reflecting open market value, including a share of marriage value and any loss of development potential;
 - ii) The rationale of the reforms ceased to be a desire to address hardship on the part of tenants who were seen as particularly deserving, but rather a desire to address what were seen as structurally unfair features of the leasehold model of property ownership: the fact that the tenant acquired an asset which reduced in value over time (as the landlords’ residual and corresponding element of the “split ownership” increased in value), and the fact that it left tenants at the mercy of landlords so far as decisions relating to the property which remained in the landlords’ hands were concerned. The Law Commission, at [2.17] of the Consultation Paper, summarised the position as follows:

“This rationale reflected a shift away from leasehold as a form of tenure generally. It represented a feeling that the wasting nature of leaseholds, and leaseholders’ general lack of control, rendered leasehold unfit for purpose. This policy direction was certainly contributed to by the anticipation of the invention of commonhold as a new form of ownership, but the anti-leasehold feeling ran somewhat more widely than that.”

65. Further significant changes to the statutory enfranchisement scheme were effected by the Housing Act 1996 (“the HA 1996”) which significantly reduced the application of the low rent tests under the LRA 1967 and for all claims under the LRHUDA 1993. The avowed purpose of this measure was to reduce the complexity of the enfranchisement process, which was identified as an object of statutory reform in its own right.
66. These reforms notwithstanding, the leasehold model of residential property ownership remained a topic of concern. Further Government proposals and consultation followed: in 1998 “Residential Leasehold Reform in England and Wales – A Consultation Paper” and in 2000 “Commonhold and Leasehold Reform – Draft Bill and Consultation Paper” Cm 4843 (“the 2000 Consultation Paper”) were published. The Ministerial foreword to the latter referred to “many drawbacks” in the leasehold model, including that “an investment in a home steadily loses value as the lease approaches the end of the term”. In identifying the benefits of the proposed reform, the 2000 Consultation Paper stated at Annex A paras. 6 and 7 that “leaseholders often complain of the behaviour of landlords who exercise their rights to collective service charges and to expend them with little or no consultation” and “leasehold interests are wasting assets”, with the lease being surrendered at the end “with nothing to show for the investment of the original premium or, often, a significant proportion of the annual service charge.” A second section of the 2000 Consultation Paper noted at [1] that “the Government consider that the existing residential leasehold system is fundamentally flawed”, with “the balance of power ... heavily weighted in favour of one party (the landlord) at the expense of another (i.e. the leaseholders)”. It put forward proposals, including “right to manage” provisions and reforms to the collective enfranchisement regime, intended to “address the uneven balance between landlords and leaseholders, and give leaseholders a greater degree of control over the management of their homes which reflect the substantial investments they have made” ([3]). The continuity between the perceived deficiencies in the leasehold model of ownership addressed in the 2000 Consultation Paper, and those later referred to in the Consultation Paper produced by the Law Commission in 2020, is striking.
67. These proposals were carried forward in the CLRA 2002:
 - i) Commonhold was introduced as an alternative to the “split ownership” freehold/leasehold model;
 - ii) The residence test under the LRA 1967 in relation to houses was replaced by an ownership requirement;
 - iii) The residence test for collective enfranchisement under the LRHUDA 1993 was also replaced by a two-year ownership requirement (the 2000 Consultation Paper having noted that such a reform would “benefit leaseholders who occupy their flat as a second home or sub-let” (page 112, [14]) and “ensure that people

who occupy leasehold flats as second homes or sub-let them have a remedy to the wasting asset problem” (page 156, [9]), with an ownership requirement to prevent short-term speculation);

- iv) Save for certain excluded cases, the “low rent” qualifying requirement was removed under both LRA 1967 and the LRHUDA 1993;
- v) The percentage requirements for collective enfranchisement were made less demanding;
- vi) “Marriage value” was removed from premium calculations for leases with more than 80 years to run (the 2000 Consultation Paper noting that the Government had concluded that “landlords are entitled to a fair market price ... including a share of the marriage value which would normally occur in an open market sale”: page 111, [9], 149, [71]);
- vii) In cases where “marriage value” was to be assessed, it was to be split “50-50” between the tenant and the landlord.

68. Taking the abolition of the residence requirements first:

- i) The Law Commission noted in 2018 that one justification for the abolition of the residence requirement under the LRA 1967 was that the test unfairly excluded from enfranchisement some tenants who used their dwelling personally (e.g. as a second home convenient for the workplace or the temporary letting of a dwelling while working abroad) and therefore had not acquired the property purely for investment purposes (Consultation Paper [2.24]). As we have noted, the 2000 Consultation Paper intended the abolition of the residence test to cover both second homes and property which is sub-let. The ownership test was introduced to deal with those who bought leasehold property in order to make *short-term* speculative gains from enfranchisement.
- ii) The Law Commission also noted that the abolition of the residence requirement was justified on the basis that: “it is impossible to devise a fair, workable and unambiguous qualifying test that relies on such a slippery concept as residence” and “as we have already explained in the context of the right to manage and collective enfranchisement, when considering eligibility for leaseholders' rights we believe that the key principle should be the extent of their stake in the property rather than their length of residence” (see the references at footnote 87 to the Consultation Paper at [2.26]).

69. Turning to the Marriage Value Reform:

- i) The 80-year rule was intended to simplify enfranchisement by avoiding arguments as to the remaining length of lease at which consideration of marriage value might arise. It was also intended to reverse what was seen as an unintended consequence of the LRHUDA 1993 which appeared to have led to an element of marriage value being included even where a lease had more than 80 years to run. The reform reflected a judgment that there was, at best, minimal marriage value in leases with over 80 years to run. But the legislation has had a significant

and unintended consequence. The Law Commission’s Consultation Paper noted at [2.28]:

“The effect in the market of marriage value being payable where leases have less than 80 years to run, but not where leases have more than 80 years to run, has been dramatic, rendering leases of less than 80 years effectively “short leases”.

...

In other words, such leases are not generally considered to be adequate security for lenders, and are accordingly more difficult to sell.”

- ii) The 50:50 split was intended to reflect the existing consensus in the tribunals, and avoid costly argument that a departure from that consensus was appropriate in a particular case.

- 70. The Housing and Regeneration Act 2008 abolished the low rent test for freehold acquisition claims under the LRA 1967, and in relation to all leases commencing on or after 7 September 2009. This measure was intended to simplify the process of lease enfranchisement. Further limited changes were made by the Housing and Planning Act 2016 to those provisions of the LRA 1967 and the LRHUDA 1993 concerning the valuation of minor intermediate leasehold interests, changes intended to overcome difficulties in operating the existing valuation formulae for those purposes.

The LFRA 2024

- 71. What changes does the LFRA 2024 make to the rights of enfranchisement which resulted from legislation over the 50-year period from 1967 to 2016? The LFRA comprises 125 sections (in 9 Parts) and 13 schedules, and is nearly 400 pages long.² But this case is essentially concerned with Part 2 of the LFRA 2024, “Leasehold enfranchisement and extension”.
- 72. Section 33 replaces the right of the tenant of a house under the LRA 1967 to obtain a 50-year lease extension, and the right of the tenant of a flat under the LRHUDA 1993 to obtain a 90-year lease extension, in each case with a right to obtain a 990-year lease extension at a peppercorn rent.
- 73. Section 35 replaces the existing valuation provisions for a freehold acquisition or lease extension in respect of a house under s.9 of the LRA 1967 with the regime created by s.37 of the LFRA 2024. Section 36 effects a similar change so far as the valuation provisions for collective enfranchisement or the granting of a new lease under the LRHUDA 1993 are concerned.
- 74. The regime for freehold acquisition for houses under the original s.9 of the LRA 1967 (low value houses) is left unchanged.

² We note that the IA which accompanied the Bill estimated that it would take 2.94 hours to read at an average reading pace of 200 words per minute.

75. In respect of these rights of enfranchisement, and subject to the right of certain tenants under s.46 to avail themselves of their enfranchisement rights under the LRA 1967 where these are more favourable, s.37 provides for a new regime where “the price payable is ... the market value”, Schedule 4 setting out “how the market value is to be determined”:
- i) For a freehold enfranchisement the “market value is the amount which the relevant freehold could have been expected to realise if it had been sold on the open market by a willing seller at the valuation date” (para. 2(2) of Schedule 4).
 - ii) For leasehold extensions “the market value is the amount which the notional lease could have been expected to realise if it had been sold on the open market by a willing seller at the valuation date” (para. 3(5)).
 - iii) In all cases, “it must be assumed that ... the claimant is not seeking and will not seek to acquire the relevant freehold or notional lease” (para. 17(3)(a)) with a similar assumption for the nominee purchaser in a collective enfranchisement (para. 17(3)(b)). The effect of these provisions is to remove marriage value and hope value from the calculation of market value in those cases in which it would previously have applied: “the Marriage Value Reform”.
 - iv) When calculating the value of the right to receive ground rent under the lease for the purposes of step 1 of the prescribed valuation methodology (para. 25), “as respects any period when the notional annual rent for the current lease is lower than the actual annual rent, the notional annual rent must be used instead” (para. 26(3)). Paragraph 26(4) defines the “notional annual rent” as “0.1% of the market value of the premises being valued”, which:
 - a) in the case of a freehold enfranchisement or lease extension under the LRA 1967, is the amount which the freehold of the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;
 - b) in the case of a collective enfranchisement or lease extension under the LRHUDA 1993, is the share of the relevant freehold market value which is attributable to the premises being valued.
 - v) We refer to this provision as “the Ground Rent Cap”.
76. Sections 38 and 39 amend the costs regimes applicable under both the LRA 1967 and the LRHUDA 1993:
- i) Under the LRA 1967 and the LRHUDA 1993, a tenant who initiated the enfranchisement process was liable for the landlord’s non-litigation costs (as defined) of dealing with the enfranchisement claim (by virtue of ss.9(4) and 14(2) of the LRA 1967 and ss.33(1) and 60(1) of the LRHUDA 1993).
 - ii) The effect of ss.38 and 39 of the LFRA 2024 is that the tenant and the landlord are generally each responsible for their own non-litigation costs with the following exceptions:

- a) Withdrawn or failed claims: a tenant is liable to the landlord for a prescribed amount in respect of non-litigation costs if the tenant's claim to enfranchisement ceases to have effect other than for a "permitted reason";
 - b) Low value claims: where the price payable by the tenant for enfranchisement is less than a prescribed amount, and the landlord's reasonable costs are higher than the price payable, the tenant is liable to pay the landlord the difference between the price payable and the landlord's costs up to the prescribed amount;
 - c) To the extent that the landlord incurs additional costs because the tenant makes an election which lowers the premium, or where the tenant requires the landlord to take a lease of units in the building which are not part of a collective claim: elective leasebacks.
- iii) We refer to these provisions as the "Costs Recovery Reform."
77. Finally, as we have mentioned, there are two other provisions which are not the subject of claims for a DoI in themselves, but which C&G contend should be brought into account when considering their challenge to the Marriage Value and the Ground Rent Cap as well as the separate challenge to the Costs Recovery Reform:
- i) The permissible internal floor area devoted to non-residential use for a building to be eligible for enfranchisement under the LRHUDA 1993 has been increased from 25% to 50% (s.32 of the LFRA 2024).
 - ii) Where there are non-participating tenants in a building which is subject to collective enfranchisement, the landlord previously had an option as to whether to accept a leaseback of those units (s.36 and sched.9 of the LRHUDA 1993), but under the LFRA 2024 it is compulsory for the landlord to accept a leaseback (s.32 of the LFRA 2024).

5. Article 1 of the First Protocol – the legal principles

The approach of UK courts to the jurisprudence of the European Court of Human Rights

78. There is a considerable body of case law in the ECtHR on the interpretation and application of A1P1. In the absence of special circumstances, domestic courts should follow the "clear and constant jurisprudence of the Strasbourg Court, recognising that the Convention is an international instrument, the correct interpretation of which can be authoritatively expounded only by the Strasbourg Court" (*R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15; [2008] AC 1312 at [20]).
79. The duty of domestic courts is to keep pace with that jurisprudence as it evolves over time, no more, no less. If a domestic court takes a conservative approach to a problem it is open to a party to make an application to the ECtHR. But if a domestic court goes further and grants relief against the Government or a public authority, they cannot make an application to Strasbourg to have a mistaken view of the ECHR rectified. Accordingly, a domestic court should not go further than it can be confident that the

ECtHR would go (*R (AB) v Secretary of State for Justice* [2021] UKSC 28; [2022] AC 487 at [54]-[59]; *R (Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56; [2023] AC 559 at [63]).

The structure of AIP1

80. In *Sporrong and Lönnroth v Sweden* (1983) 5 EHRR 35 the ECtHR held at [61] that AIP1 comprises three rules:

- (1) A first and general rule set out in the first sentence that enunciates the right to peaceful enjoyment of property;
- (2) A second rule against deprivation of possessions save in the public interest and subject to certain conditions; and
- (3) A third rule recognising a State's entitlement to control the use of property in accordance with the general interest.

The second and third rules are particular instances of, and are applied before, the general principle in the first rule (see also *AXA General Insurance Limited v HM Advocate* [2011] UKSC 46; [2012] 1 AC 868 at [107]-[108]).

81. An interference which does not cause the owner to lose all meaningful use of his possession is likely to be treated as a control of use rather than a deprivation (*R (British American Tobacco UK Limited) v Secretary of State for Health* [2016] EWCA Civ 1182; [2018] QB 144). However, as we have noted, in this case it was common ground by the time of the hearing that the exercise of any of the rights to enfranchise, including the grant of a 990-year lease extension, would involve a deprivation of a possession and we proceed on that basis.

James v United Kingdom

82. In *James* the ECtHR considered 80 enfranchisement transactions in Belgravia, of which 3 related to building leases and 77 to premium leases. In the case of a building lease the ground rent related to the value of the bare site and the tenant covenanted to build a house on the land at his own cost. In the case of a premium lease the tenant paid a capital sum for a house provided by the landlord and a ground rent. The premium would take into account the costs of erecting the building and a profit element. Both types of lease made the tenant liable for repairs ([12]-[13] and [27]). The valuation basis in the LRA 1967 (site value) was applied in 28 of the cases and the valuation basis in the HA 1974 (house and site value) was applied in the remaining 52 cases [27].

83. The court noted that a long lease is a wasting asset. At the beginning of a very long term the value of the tenant's interest may be more or less *equivalent to that of a freehold* if the rent payable is nominal. But the value of the tenant's interest diminishes as the remaining term reduces, whereas the value of the landlord's interest, in particular the reversion value, increases towards full FVPV. At the end of the lease, the tenant's interest ceases to exist and the buildings and land revert to the landlord with the benefits of the tenant's maintenance and any improvements he has made, without any compensation being payable to the tenant [13].

84. At [40]-[41] of *James* the ECtHR considered an argument of the applicants that the term “public interest” in the deprivation rule in A1P1 could never apply to a compulsory transfer of property from one person to another private party:

“40. The Court agrees with the applicants that a deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be 'in the public interest'. Nonetheless, the compulsory transfer of property from one individual to another may, depending upon the circumstances, constitute a legitimate means for promoting the public interest. In this connection, even where the texts in force employ expressions like 'for the public use', no common principle can be identified in the constitutions, legislation and case law of the Contracting States that would warrant understanding the notion of public interest as outlawing compulsory transfer between private parties. The same may be said of certain other democratic countries; thus, the applicants and the Government cited in argument a judgment of the Supreme Court of the United States of America, which concerned State legislation in Hawaii compulsorily transferring title in real property from lessors to lessees in order to reduce the concentration of land ownership.

41. Neither can it be read into the English expression 'in the public interest' that the transferred property should be put into use for the general public or that the community generally, or even a substantial proportion of it, should directly benefit from the taking. *The taking of property in pursuance of a policy calculated to enhance social justice within the community can properly be described as being 'in the public interest'. In particular, the fairness of a system of law governing the contractual or property rights of private parties is a matter of public concern and therefore legislative measures intended to bring about such fairness are capable of being 'in the public interest', even if they involve the compulsory transfer of property from one individual to another.*” (emphasis added)

85. Thus, a measure designed to ensure a more equitable distribution of economic benefits and/or burdens within a particular form of legal relationship, may justify a deprivation of private property in the public interest in accordance with A1P1. The Court stated, “[a] taking of a property affected in pursuance of legitimate social, economic or other policies, may be ‘in the public interest’ even if the community at large has no direct use or enjoyment of the property taken” ([44]-[45]).

86. On margin of appreciation the Court in *James* said this at [46]:

“... the notion of 'public interest' is necessarily extensive. In particular, as the Commission noted, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the

legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation.”

87. At [47]-[49] of *James* the court considered the aim of the LRA 1967, to remedy economic injustice as between landlord and tenant, to be legitimate. At [47] the court stated:

“47. The aim of the 1967 Act, as spelt out in the 1966 White Paper, was to right the injustice which was felt to be caused to occupying tenants by the operation of the long leasehold system of tenure. The Act was designed to reform the existing law, said to be 'inequitable to the leaseholder', and to give effect to what was described as the occupying tenant's 'moral entitlement' to ownership of the house.

Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of people's homes, even where such legislation interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large. In principle, therefore, the aim pursued by the leasehold reform legislation is a legitimate one.”

The court specifically referred to the tenant's “moral entitlement” to the house which had formed the basis for the approach taken in the LRA 1967 (and see also [51] and [56]).

88. The court noted that the main criticisms of the legislation had been voiced when it was under consideration and being debated. The fact that political considerations had influenced the process did not preclude the aim of the legislation from being legitimate [48]. The injustice of the leasehold system, and the respective “moral entitlements” of tenants and landlords, were matters of judgment on which there was room for legitimate conflict of opinion. The views of the applicants were not groundless, but there was sufficient evidence to support the legislature's view to the contrary [49].
89. There then followed this important passage:

“In a building lease the original tenant will have built the house, in a premium lease he will have paid an initial capital sum which typically took account of the building cost, and in both kinds of lease the tenant will have been responsible for all running repairs. This means that the long-leasehold tenant and his predecessors will over the years have invested a considerable amount of money in the house which is their home, whereas the

landlord will normally have made no contribution towards its maintenance subsequent to the granting of the original lease.”

It is significant that those same economic considerations underpin the rationale for the measures under challenge in the claims before us.

90. In these circumstances the court decided that the UK Parliament’s belief in the existence of this social injustice was not manifestly unreasonable, or outwith the margin of appreciation [49]. However, it went on to decide that there also has to be a reasonable relationship of proportionality between the State’s aim and the means it employs. Alternatively, a fair balance has to be struck between the public interest and the requirements for protecting an individual’s property rights. The requisite balance will not exist if a party would have to bear an “individual and excessive burden” (*James* at [50]). The court then considered the specific arguments which had been raised on the striking of a fair balance in that case (51)-[69]).
91. The availability of alternative solutions does not itself render legislation unjustified. That is one factor in deciding whether the means selected are reasonable and suitable for achieving the aim and whether the balance is fair [51].
92. Although in *James* the tenant’s “moral entitlement” argument applied *across the board*, Parliament had not acted unreasonably in restricting the right to enfranchise in 1967 to less valuable houses, nor in extending that right in 1974 to certain more valuable houses, albeit on a different valuation basis. Those decisions fell within the State’s margin of appreciation [52].
93. The taking of property without *any* compensation can only be justifiable under the deprivation rule of A1P1 in exceptional circumstances. The terms of the compensation payable are relevant to an assessment of whether the contested legislation represents a fair balance between the various interests involved and whether or not it imposes a disproportionate burden on one group. As to the standard of compensation: the taking of property “without payment of an amount *reasonably related* to its value” would normally constitute a disproportionate interference which could not be justified under A1P1. But that Article does not guarantee a right to full compensation in all circumstances. Legitimate public interest objectives, such as measures for economic reform or greater social justice, may call for payment of less than full market value, that being a matter which falls within the State’s wide margin of appreciation in this domain ([54]).
94. The court then returned at [56] to the subject of “moral entitlement” discussed in [49]. Parliament had been entitled to take the view that from a moral perspective the building belonged to the tenant because of the capital payment by the tenant when the lease was granted and the monies spent since then on maintenance and improvements. It followed logically that the tenant should only have to compensate the landlord for that part of the property for which he had not already paid. Although the valuation basis in the LRA 1967 excluded marriage value, it did compensate the landlord for the existing investment value of his interest in the ground. Accordingly, a fair balance had been struck between the interests of the private parties concerned and thereby between the general interest of society and the landlord’s right of property.

Strasbourg jurisprudence after James

95. The ECtHR has continued to take the same approach to the width of the margin of appreciation in the field of housing, which is regarded in modern society as a central concern of social and economic policies (*Mellacher v Austria* (1989) 12 EHRR 391 at [45]):

“In order to implement such policies, the legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures.”

96. In *Hutten-Czapska v Poland* (2007) 45 EHRR 4 the Grand Chamber stated at [166]:

“The notion of “public” or “general” interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of contracting states, may often call for some form of regulation by the state. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to state control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues.

Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature’s judgment as to what is in the “public” or “general” interest unless that judgment is manifestly without reasonable foundation. ...”

97. The claimants cited a Chamber decision in *Lindheim v Norway* (2012) 61 EHRR 29 as indicating a change of approach since *James*. But in fact *Lindheim* relied upon this same statement in *Hutten-Czapska* as well as several of the key passages in *James*.
98. Nevertheless, the claimants say that *Strasbourg* jurisprudence has moved on since *James*. Ms. Carss-Frisk KC, appearing on behalf of the ARC claimants, submitted that a new wind is blowing and that the courts are taking “a more muscular approach” to the application of A1P1. This is said to be based largely on *Lindheim* at [135], where the Chamber court referred to “jurisprudential developments” since *James* “in the direction of a stronger protection under [A1P1]”. Unfortunately, that decision did not state what those developments were thought to be. Certainly, there is nothing in *Lindheim* or in any other authority cited to us disapproving or altering any statement of principle in *James*. Those principles continue to be cited and applied. They form part of the clear and constant jurisprudence of the Strasbourg court.

99. It may be significant in relation to the unexplained observation at [135] of *Lindheim* that the court treated that case as involving a control of use rather than a deprivation of a possession ([76]-[78]). In *R (Mott) v Environment Agency* [2018] UKSC 10; [2018] 1 WLR 1022 Lord Carnwath JSC stated at [32] that the Strasbourg cases show that the distinction between expropriation and control of use is neither clear-cut, nor crucial to the application of A1P1 (see also *AXA* at [107]-[108]). That was in the context of a case where the central issue was whether a control of use through a licensing scheme imposed a disproportionate burden on the licensee in the absence of *any* compensation for the substantial loss caused (see [31]). The more recent Strasbourg cases cited to us were mainly concerned with the financial consequences of legislation controlling the use of property. It was not suggested that those decisions on the third rule in A1P1 had any implications for the standard of compensation approved in *James* and other authorities for the second rule in A1P1, the deprivation rule, or for the application of that standard. Nevertheless, we will address those cases.
100. *Lindheim* concerned ground lease agreements entered into before 1976 for either permanent homes or holiday homes, generally for a term of 99 years. It is important to note that those agreements let only bare sites to the tenants who were responsible for investing in and carrying out the construction of buildings on the land. The site owner “would renounce the possibility of using the property for financial gain by any other means than receiving the ... rent” for the ground [121]. It was common ground before us that a landlord received only that rent and *no premium*. From 1976 statutory controls began to be applied. Initially, tenants had a right to extend their agreements but landlords were able to introduce new conditions. Rents were allowed to rise in line with a consumer price index [39]. Between 1950 and 1980 real-estate prices moved in line with general inflation. But after 1980 property prices soared ([12]-[13]). Some lessees were financially unable to exercise a right of redemption to purchase their plots of land, even at 40% of undeveloped plot value ([19] and [97]). Accordingly, under new legislation in 2004 which amended s.33 of the Ground Lease Act 1996, lessees were given the right to extend their leases for an indefinite duration and on the same terms as before ([8]-[11]). The court decided that the low limit on the level of rents payable to the landlords for an indefinite duration (less than 0.25% of the market value of a plot) constituted an interference with the enjoyment of their possessions under the third rule in A1P1, the control of use rule ([77]-[78]).
101. The court accepted that the legislation pursued a legitimate aim of social policy, although it had a much wider reach than addressing potential financial hardship and social injustice and applied to holiday homes as well as permanent homes ([99]-[100], referring to *James* at [48]-[49]). Nonetheless, the court concluded that a fair balance had not been struck because, in summary:
- (1) No assessment had been made of the effect of the extension provisions on landlords and tenants [128];
 - (2) The level of rent, at less than 0.25% of the market value of a plot, was particularly low and there were “no general interest demands sufficiently strong to justify such a low level of rent bearing no relation to the actual value of the land” [129];
 - (3) That low level of rent was payable irrespective of the financial means of a lessee [130];

- (4) The extension was for an indefinite duration with no upwards adjustment except for price inflation [131];
 - (5) Any increase in the value of the land would accrue to the tenant if he should sell his tenancy [132];
 - (6) The burden of remedying the problems identified had been placed solely on landlords [134].
102. In *The Karibu Foundation v Norway* (App. No. 2317/20, 3 April 2023) the ECtHR held that the amendments made by the Norwegian legislature in response to *Lindheim* had struck a fair balance. The statute provided for a one-off increase in rents to 2% of plot value, a revaluation using that same measure every 30 years and a further adjustment for price inflation at least every 10 years. But that one-off increase in rent to 2% of plot value was subject to an absolute ceiling, adjusted solely for inflation (see [63]). Thus, the main difference introduced by the legislation considered in *Karibu* was simply that increase in the linkage of ground rent to a percentage of site value.
103. The ECtHR again held that it was appropriate to apply a wide margin of appreciation [74]. The Court noted that the percentage of plot value had been set in the legislation at 2%, rather than the 2.5% initially proposed, but considered that that reflected the virtually risk free, passive nature of the investment ([40] and [87]). In fact, the applicant landlords in *Karibu* were only entitled to rents equating to about 0.6% of plot value ([33] and [86]). Notwithstanding the limited financial opportunity allowed to a landlord to exploit its property rights (in particular because of the rent ceiling fixed in real terms [89]), the amended statutory scheme did not violate A1P1. In reaching that conclusion the court attached “considerable weight” to the thorough review of the proposed legislation which had been carried out [92]. The Court was not troubled by the absence of any reference in that review to such matters as the applicant’s financial need to fund its philanthropic activities or the wealthy circumstances of the lessees ([2], [69], and [81]). The Court accepted that in view of the very large number of ground lease contracts in Norway, there was a legislative need for clear and foreseeable solutions, to avoid costly and time-consuming litigation on a large scale. The general interest in addressing “social policy concerns” was coupled with the interest in enacting legislation providing for “general regulation” ([78] and [93]).
104. A number of the other Strasbourg cases cited to us were concerned with rent restrictions as a control of use, not a deprivation. But the factual circumstances were extreme and self-evidently amounted to a violation of A1P1. Thus, in *Hutten-Czapska*, landlord and tenant legislation capped rents at such low levels that they did not even cover the costs incurred by landlords on maintenance, let alone allow for any profit or return (distinguishing *Mellacher*). In addition, there were severe constraints on a landlord’s ability to terminate a tenancy and obtain possession. In *Gauci v Malta* (2011) 52 EHRR 25 the level at which a controlled rent had been set was about 12.5% of market value and the landlord was forced to remain in a relationship with the tenant for an indefinite period. The socio-economic conditions which had justified the controls 50 years beforehand had ceased to exist. Similar considerations applied in *Zammit v Malta* (2017) 65 EHRR 17 where a cap prevented the rent from exceeding 40% of what would have been a fair rent in 1914. In *Radovici v Romania* (2010) 51 EHRR 32 legislation imposed on landlords who had obtained, but failed to serve properly, an eviction order

against their tenant, a five year extension of the tenancy, effectively with no means of obtaining any rent.

105. It is not difficult to see why in such cases the court decided that a fair balance had not been struck, not least because the severe burden of the State's social aims had been placed on one particular social group, rather than being distributed fairly across the community. These decisions were not concerned with addressing perceived unfairness or inequity as between the parties to an existing form of legal relationship, but with an attempt to address a much broader societal injustice for tenants, such as shortages of accommodation in the housing sector, by measures the effect of which was borne exclusively by landlords.
106. We turn to consider ECtHR cases in which the deprivation rule was violated because of the inadequacy of the compensation provided.
107. In *Scordino v Italy (No.1)* (2007) 45 EHRR 7 the Grand Chamber clearly laid down an important distinction between cases involving a "distinct expropriation", in the sense of compulsory acquisition for a particular development project, from a deprivation in pursuit of a process of economic, social or political reform ([95]-[98], [101]-[103] and [256]-[257]). In cases of distinct expropriation normally only full compensation is regarded as "reasonably related" to the value of the property. On the other hand, measures promoting economic, social (including social justice), or political reform may justify a substantial departure from full compensation. The Grand Chamber based this distinction notably on *James* at [54], as well as *Broniowski v Poland* (2005) EHRR 21 at [182].
108. In *Broniowski v Poland* the Grand Chamber stated that the reform of a country's economic and political system, and the state of its finances, could justify expropriation of property with "stringent limitations" on compensation. Nevertheless, a violation of A1P1 was established in that case because there was no justification for the applicant to have received only 2% of the amount to which he had been entitled. Plainly the level of detriment to the applicant in that case is not remotely comparable to the effects of the three measures in the LFRA 2024. The extreme level of the impact on that applicant was similar to several of the rent restriction (control of use) cases, discussed above.
109. Other cases cited by the claimants were examples of distinct expropriation. In *Katkaridis v Greece* (2001) EHRR 6 the applicants owned business properties adjoining a major road to which they had access. Parts of their properties were expropriated for the construction of a flyover, as a result of which they ceased to have a connection to a major road. The legislation provided that adjoining owners benefiting from a new major road up to 30m wide should pay for an area of land 15m wide and deemed that the owners of properties fronting a new road derived such a benefit. The ECtHR held that A1P1 had been violated because the compensation for each applicant had been reduced by the value of an area 15m wide, without any regard to the reality that the works in question had been of no benefit or had in fact caused losses to the businesses concerned. The inflexible deeming provision was held to be manifestly without reasonable foundation because it required the diverse range of effects of a road scheme on adjoining properties to be disregarded ([49]-[50]).
110. In *Papachelas v Greece* (2000) 30 EHRR 923 the Grand Chamber, having rejected an A1P1 complaint that the compensation per sqm for the expropriation of over 150

properties for a road-building scheme was 3% below market value ([49]-[50]), went on to find that that Article had nevertheless been breached because of that same deeming provision in Greek law, following the decision in *Katikaridis*. The burden imposed on landowners by that deeming provision was excessive and illegitimate unless they had an opportunity to prove the damage they had sustained and, if successful, to receive relevant compensation ([53]-[54]). This too was a distinct expropriation case.

111. In *Scordino v Italy (No.1)* land had been made subject to an expropriation permit for the construction of housing. The Grand Chamber held that compensation amounting to less than half the market value of the land struck an unfair or disproportionate balance. The court said that like *Papachelas* this had been a “distinct expropriation” case.
112. *Kozacioglu v Turkey* (2011) 53 EHRR 34 also falls into the distinct expropriation category. There the applicant’s house, which had been classified as a cultural and historical asset, was expropriated as part of a scheme for the regeneration of the surrounding area. The Grand Chamber decided that the decision of the Court of Cassation that a building’s historic features and rarity could not be taken into account in assessing its value for the purposes of compensation (in that case it was said to increase the value by 100%) violated A1P1. A particular feature which supported the ECtHR’s conclusion that an excessive burden had been imposed on an individual and a fair balance had not been struck, was that under Turkish law any depreciation in the market value of a building attributable to its “listed status” would be taken into account in the assessment of compensation for expropriation, but any appreciation in its value resulting from that status would not ([65]-[72]).
113. Having reviewed the Strasbourg jurisprudence, we accept the defendant’s submission that the principles laid down in *James* essentially remain sound law today. The legislation considered in *James* did not involve “distinct expropriation”; it concerned economic and social measures of broad application, including the remedying of socio-economic injustice. The tests which the ECtHR applied in *James* to measures of that kind continue to be applicable. The ECtHR decided that the measure of compensation in *Katikaridis* and *Papachelas* violated A1P1 because it was applied generally without any regard to individual circumstances including losses. But those were distinct expropriation cases. By contrast, when dealing with the socio-economic reforms of the LRA 1967, the court in *James* rejected at [68]-[69] the applicant’s criticisms of the legislation for failing to provide any independent machinery for adjudicating on the justification for expropriation or the principles for assessing compensation in individual cases (see [164] below). That challenge has not been revived in these proceedings.
114. The claimants rightly point out that the discussion of enfranchisement legislation after the LRA 1967 has ceased to be influenced by the notion that morally, or in “equity”, the land should be treated as belonging to the landlord and the house to the tenant, so that the price payable on enfranchisement should reflect only land value. From 1974 Parliament’s intention has been that the landlord’s compensation should reflect the value of the house as well as the site. But that does not mean that the ECtHR’s application of A1P1 principles in *James* to the enfranchisement code is outdated. The economic fundamentals essentially remain the same.
115. The position is that the tenant makes a very significant economic outlay, namely a substantial lease premium to the original landlord for land and dwelling and throughout the term ground rent, service charges and the costs of maintaining the building and

improvements (and/or a payment to the preceding tenant to acquire the fruits of that outlay). Yet the interest the tenant receives is a wasting asset which, in the absence of statutory intervention, declines to a nil value by the term date, when he is obliged to return to the landlord the land and the dwelling maintained throughout the lease. Furthermore, there comes a point when the remaining length of the lease makes it practically unsaleable, because purchasers cannot obtain a mortgage from lenders for a term which they consider to be short (generally under 80 years). But despite the substantial outlay made, a tenant is only able to overcome the diminution in the value of his asset to nil and/or unsaleability by embarking upon the process of enfranchisement at a substantial additional cost. This “wasting asset problem” lies at the heart of the imbalance and unfairness in the relationship created by a long lease paid for by this substantial outlay.

116. In these circumstances, it is unsurprising that domestic courts have consistently referred to the obstacle presented by *James* to claims that the amount of compensation payable for enfranchisement violates A1P1 (*Wilson v First County Trust Limited (No.2)* [2003] UKHL; [2004] 1 AC 816 *per Lord Nicholls* at [68]-[70]; *Earl Cadogan v Sportelli* [2008] UKHL 71; [2010] 1 AC 226 *per Lord Walker* at [48]; *The Trustees of the Alice Ellen Cooper-Dean Charitable Foundation v Greensleeves Owners Limited* [2015] UKUT 320 (LC) *per Sir Keith Lindblom* President at [89]; and *Kateb v Howard de Walden Estates Limited* [2017] 1 WLR 1761 *per Patten LJ* at [47]-[49]).

Are the effects of the wasting asset problem priced into the premia for residential leaseholds?

117. Landlords suggested to the Law Commission that the wasting nature of a long lease is priced into the premium which a tenant pays (see e.g. [3.9] of the Valuation Report – see [217] below). The implicit assertion is that a lessee will pay a commensurately lower price in the market for a long lease than for a freehold with vacant possession of an equivalent dwelling which adequately values the difference between acquiring a time-limited interest declining in value to zero as opposed to a permanent asset.
118. ARC, C&G and Abacus made relatively brief reference to material said to support a similar assertion. Some of that material was only served in early June 2025, purportedly in reply and therefore giving a limited opportunity for exploration or response.³ Given that the imbalance in the relationship between landlords and tenants in relation to long leaseholds and the wasting asset problem had been a central feature of the ECtHR’s decision in *James* and of the Law Commission and Government papers over many years leading up to the reforms in the LFRA 2024, it is surprising that the claimants did not grapple with these matters from the outset of these proceedings.
119. In *James* the ECtHR accepted at [13] that at the beginning of a very long lease the value of the tenant’s interest may be more or less equivalent to a freehold interest if the rent payable is a nominal one (see [83] above). We would add that if the ground rent payable is significantly higher, or subject to escalation, then in principle the premium for that lease might be reduced by the present value of that rental stream, so that the outlay would be similar to the value of a lease at a peppercorn (but see below).

³ For example, the first witness statement of Ms Nathalie Chambers for Wallace and the witness statement of Mr Mark Stephens for John Lyon’s Charity.

120. In her witness statement at paras. 151-152 and 154, Ms. Crowther, Director for Leasehold, Private Renting and Digital within the Ministry of Housing, Communities and Local Government, refers to what central government has seen as the “fundamentally unfair” nature of leasehold as a system of tenure for dwellings. She says that purchasers pay market prices for leasehold in the expectation of becoming an owner in the fullest sense of a dwelling, but their asset depreciates over time and they have to pay again to buy the freehold reversion or extend their lease to retain the dwelling they have already paid for.
121. We were provided with a significant body of material indicating that in practice there is not a substantial difference in the market between the price paid for a freehold as opposed to a long lease, or at least not one which fairly reflects the economic differences between these two models of ownership:
- i) The Law Commission Consultation Paper at [1.39] referred to concerns that “many leaseholders, when they acquired their lease, will have paid a premium that was not substantially different from the value of freehold interest in the property”. At [1.41] the Consultation Paper stated that they had been told “that many prospective purchasers of houses and flats – particularly first-time buyers – do not have a full understanding of the terms of the lease or of the implications of owning a leasehold property” and “may not even realise when purchasing a leasehold house that they will not become its outright owner.” They continued “consumers fail to give adequate weight to future costs in assessing the quality of an offer as a whole. This analysis may also explain consumers’ willingness to purchase long leases (perhaps at a similar price to a freehold interest) despite the further sums that will have to be paid in the future.” Following consultation, the Law Commission’s Valuation Report contained similar statements [3.4]-[3.11];
 - ii) The preliminary report in June 2017 of the All Party Parliamentary Group for Leasehold and Commonhold Reform (“the APPG”) (see [198] below) referred to the suggestion that selling leasehold houses kept prices down. In response, the APPG pointed to a 2016 survey of the HM Land Registry database which “suggests there is no clear evidence for this claim”, and other evidence “that developers may now even be seeking to sell leasehold houses at a premium over their freehold equivalent.” Their own assessment of the “top ten areas where leasehold houses were built in 2016” showed “no consistent discount for selling leasehold ”;
 - iii) The Government’s consultation paper in July 2017 “Tackling unfair practices in the leasehold market – a consultation paper” (“the 2017 UPP”) stated at [3.12] that “a leasehold house may be presented as a cheaper option than buying the freehold but it is not always clear that the initial ‘discount’ on the sale price of a leasehold house reflects the additional medium to long term costs leaseholders may face ... These costs can total thousands of pounds more than envisaged at the point of sale.” At [3.14], the Government stated it was “not convinced” of the argument that the disadvantages of leasehold were reflected in the price. In its response to the 2017 UPP, the Government stated at [35] that “while it may be that a small discount is applied on the sale price, it is not clear that this is applied across the board ...”;

- iv) The report by the Housing, Communities and Local Government Select Committee “Leasehold Reform: Twelfth Report of Session 2017–19” published on 19 March 2019 (the “HCLGSC Report”) referred at [82]-[83] to evidence of properties sold on a leasehold basis at the same price at which freehold properties were sold on the same estate and that “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”;
 - v) The Competition and Markets Authority published a report entitled “Leasehold Housing Update report” (the “CMA Update Report”) on 28 February 2020 which stated at para. 77(c) that there was no persuasive evidence that prices for a lease subject to a ground rent have been significantly reduced when compared to equivalents with peppercorn ground rents (which we accept is a separate question from whether all of the disadvantages of leasehold ownership are fully reflected in a reduction from the freehold price of an equivalent property). On that second issue, although the CMA noted that “leasehold properties sell for less than freehold properties, and there is a body of academic research that supports this proposition”, “on a number of estates we have seen evidence of houses that are essentially the same being sold for the same price whether leasehold or freehold”. The CMA saw little justification for requiring ground rent to be paid in addition to a substantial initial purchase price for the leasehold of a dwelling (para. 77(a)).
122. As we explain below ([235]-[242]), in its report entitled “Leasehold home ownership: buying your freehold or extending your lease” (No.392) (“the Enfranchisement Report”) of July 2020 the Law Commission took a firmer line on the imbalance between landlords and tenants in long leasehold relationships. For example, the Commission stated that leaseholders buy their time-limited asset at a value close to, or even equivalent to, the freehold value ([2.18] of the Report). Plainly, they had not been persuaded to the contrary view by the responses sent by landlords during the consultation.
123. We also note that in the IA’s modelling of the impact of the reforms, para. 31d of Annex 2 explains one of the assumptions used for property prices:
- “Savills reports that in the long run, this [freehold vacant possession values for dwellings] is approximately 1% higher than a standard long lease valuation.”
124. Taken overall we are not persuaded that the material upon which the claimants relied contradicts or outweighs the reports summarised above, and certainly not that Parliament and Government were not entitled to act on the clear effect of the material which we have summarised.
125. For example, the largely qualitative evidence for ARC of Ms Colton, a Solicitor, was, with respect, an unconvincing attempt to justify ground rents as providing value for items not covered by service charges (e.g. seeking competitively priced building insurance on an “institutional” rather than a “block” basis, where the premium is typically recovered from leaseholders and it is in the freeholder’s as well as the leaseholders’ interest for the building to be insured).

126. There is a bare statement in the IA produced for the Bill in 2023 at [11] that leases are generally “expected to be” cheaper than freeholds without identifying the factors taken into account or the extent of any differential. The Impact Assessment for the Leasehold Reform (Ground Rent) Bill in 2021 (which proposed to restrict the ground rents in new leases to a peppercorn) sought to identify a premium for the purchase of a freehold relative to a lease for 125 years, to see whether the effect of capitalising an assumed ground rent of £250 a year (and other costs specific to a leasehold) would cause leasehold prices to exceed freehold prices, which would not be sensible. The best estimate of that premium was 7.1%. But even if that estimated premium were to be accepted, the assessment did not consider whether it was sufficient to price in or compensate for, the various disadvantages for tenants resulting from the wasting asset problem, including the need to incur the costs of enfranchisement in order to overcome that problem. The authors of that Impact Assessment were concerned with the rather more limited question of whether there was a sufficient differential to avoid mandatory peppercorn rents having an adverse effect on the leasehold price of property.
127. Accordingly, we do not accept the claimants’ assertion that there is no unfair imbalance in the relationship between the parties to a long lease of a dwelling because the wasting asset problem and the costs of enfranchisement are fairly priced in when a long lease is granted (even if it were to be assumed that, in all cases, the purchaser of an interest in property has a genuine choice between buying a freehold or leasehold interest).

Proportionality in domestic law – general principles

128. A1P1 is a qualified, not an absolute right. The tests to be applied under our domestic law were identified by Lord Reed in *Bank Mellat v HM Treasury* (No.2) [2013] UKSC 39; [2014] AC 700 at [74]:

“(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right,

(2) whether the measure is rationally connected to the objective,

(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and

(4) whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.”

Further on in [74] he said:

“In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure.”

Lord Sumption pointed out that in practice the four tests inevitably overlap because the same facts are likely to be relevant to more than one of them [20].

129. At [70] of *Bank Mellat (No. 2)* Lord Reed pointed out that the ECtHR’s approach to the striking of the fair balance between the general interest of the community and the protection of an individual’s fundamental rights has been described differently in different contexts. In A1P1 cases the court often asks whether the individual is being asked to bear an “individual and excessive burden”, referring to *James* at [50]. The intensity of review varies considerably according to the right in issue and the context in which it arises.
130. Although the concept of a margin of appreciation is specific to the ECtHR as an international court reviewing the decision-making of national institutions, domestic courts have applied an analogous approach. The margin appropriate for a given set of circumstances is taken into account when applying the four *Bank Mellat* tests (*Adriatic Land 5 Limited v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 at [104]-[114]). One reason for this is the need for domestic courts to respect the separation of powers between the judiciary and the elected branches of government. “They therefore have to accord appropriate respect to the choices made in the field of social and economic policy by the Government and Parliament ...” (Lord Reed PSC in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26; [2022] AC 223 at [143]-[144]) (a Supreme Court decision concerned with an ECHR challenge to the “two child” limit on child tax credit).
131. The “ordinary approach” to proportionality gives appropriate weight to the judgment of the primary decision-maker. That weight will normally be substantial in fields such as economic and social policy, national security, penal policy and matters raising sensitive moral or ethical issues. This will involve giving “the same margin as the ‘manifestly without reasonable foundation’ formulation in circumstances where a particularly wide margin is appropriate”. “The courts should generally be very slow to intervene in areas of social and economic policy such as housing and social security” (*SC* at [159]-[161]).
132. In *SC* Lord Reed considered the materials which may be used when considering whether primary legislation is compatible with the ECHR, having regard to Article 9 of the Bill of Rights 1688 ([163] *et seq*). Parliamentary privilege is also based on the separation of powers between the courts and Parliament, requiring each to abstain from interference with “the functions” of the other and “to treat each other’s proceedings and decisions with respect”. It is no part of the function of the courts to supervise the internal procedures of Parliament [165].
133. We would re-emphasise the importance of Article 9 and the principle of the separation of powers. Until the Speaker helpfully intervened in this case, parties were using materials in ways which did not respect Parliamentary privilege. Since then, with one exception relating to the attempt by the Portal Trust to rely upon a passage from Parliamentary debates on the Leasehold Reform (Ground Rent) Act 2022, those issues have essentially been resolved.
134. In *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30; [2025] 3 WLR 346 the Supreme Court largely reaffirmed a number of key principles:
- (1) The question whether legislation is incompatible with a Convention right is a question of substance for the court itself to decide. The court’s function is not

merely a secondary reviewing role. It is not the conventional public law one of reviewing the process by which a public authority reached its decision and considering whether it acted irrationally or committed some other public law error. The court's task is to assess proportionality for itself [120];

(2) At [121] Lord Sales and Lady Rose stated:

“However, in a challenge based on Convention rights under the HRA to action by a public authority, it is not accurate to say that the court becomes the primary decision-maker in the full sense of that term: see *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26; [2001] 2 AC 532 (“*Daly*”), paras 26-28; *Huang*, para.13 (“although the Convention calls for a more exacting standard of review, it remains the case that the judge is not the primary decision-maker”); *Bank Mellat*, para.21 (Lord Sumption) and paras 70-71 (Lord Reed: “[t]he intensity of review varies considerably according to the right in issue and the context in which the question arises”); *R (Lord Carlile of Berriew) v Secretary of State for the Home Department* [2014] UKSC 60; [2015] AC 945 (“*Lord Carlile*”), paras 20, 22, 31 and 34 (Lord Sumption: “no review, however intense, can entitle the court to substitute its own decision for that of the constitutional decision-maker”; “a court of review does not usurp the function of the decision-maker, even when Convention rights are engaged”). The court's role is to assess the lawfulness of the authority's action against the substantive legal criteria which are inherent in the Convention rights, including the criterion of proportionality. The public authority decides on the action it will take, and hence is the primary decision-maker; but the court makes its own assessment whether such action is proportionate, and hence lawful, or not.”

(3) At [122] they stated:

“... the question whether a measure is proportionate or not involves a more searching investigation than application of the rationality test. Thus, in relation to the test of proportionality *stricto sensu*, even if the relevant decision-maker has had regard to all relevant factors and has reached a decision which cannot be said to be irrational, it remains open to the court to conclude that the measure in question fails to strike a fair balance and is disproportionate.”

(4) Accordingly at [123]:

“... in the context of the proportionality assessment to be carried out by the court, there is room for appropriate respect and weight to be given to the views of the executive or the legislature as to how the balance between the interests of the individual and of the general community should be struck, depending on the nature of those respective interests.”

and at [124]:

“... the context relevant to determining the measure of respect to the balance of rights and interests struck by a public authority will include the importance of the right, the degree of interference and the extent to which the courts are more or less well placed to adjudicate, on grounds of relative institutional expertise and democratic accountability”

- (5) The appropriate margin of appreciation applies to all four of the *Bank Mellat* tests [130];
- (6) The legislative judgment on which a provision was based was necessarily something fixed in the past. But even so, a genuine up-to-date account of the public interest in favour of such a provision by relevant public authorities with superior democratic and institutional expertise would carry weight in the court’s assessment of the proportionality of the measure. Such an account might constitute reasons why the Government considered the law satisfactory and defensible, so that in their judgment it was not necessary to seek amendment of it. Although it would not carry the force of a positive democratic judgment by Parliament itself when enacting primary legislation, it would still be a judgment of persons who are accountable to the legislature and to the public for promoting the public interest. The proportionality of a measure, including legislation is to be assessed by reference to the circumstances prevailing when the issue of its compatibility with Convention rights has to be decided rather than when it was promulgated [135] and [140]. For this reason, we do not accept the claimants’ submission that these principles on the use of post-legislative justification are only relevant to secondary and not primary legislation, but our conclusions on proportionality do not depend on such justification.

Assessing the aims of a measure and its justification

135. In *SC* at [165]-[185] Lord Reed laid down a number of principles for identifying the aims of legislation challenged under s.4 of the HRA 1998 while respecting the constitutional separation of functions between Parliament and the judiciary. In doing so he reflected Lord Nicholls’ speech in *Wilson (No.2)* at [61]-[67]). We give a brief summary of those principles:

- (1) Government is separate from Parliament, although there are many connections between the two. The legislative function belongs to Parliament, not the executive. It is Parliament’s intention that defines the policy and objects of an enactment. Accordingly, the reasons why Government promotes legislation cannot *necessarily* be treated as explaining why Parliament chose to enact it ([166]);
- (2) The will of Parliament is expressed solely through the legislation it enacts. Neither Parliament nor individual members give reasons for enacting legislation or for voting in a particular way [167]. Parliament does not operate solely, or even primarily, as a debating chamber. It is also a forum for gathering evidence and extra-cameral discussion, negotiation, and compromise. Voting may be

influenced by party policy. Thus, the decisions taken by Parliament are not necessarily capable of being rationalised [168];

- (3) It follows that Parliamentary methods of resolving disputes are very different from judicial methods, aimed at the production of decisions by an independent and transparent process of reasoning. That reflects the different nature of its functions. The Parliamentary process arrives at decisions the legitimacy of which is accepted, not because of the quality or transparency of the reasoning involved, but because of the democratic credentials of its decision-makers [169];
- (4) Consequently, the courts must be careful not to undermine Parliament's functions by requiring or encouraging conformity with a judicial model of rationality, which is not suited to resolving differences of political opinion [171]. The intention of Parliament is essentially a legal construct rather than something which can be discovered by an empirical investigation. This is illustrated by the way in which the court identified the rationale for the Hunting Act 2004 [172], referring to *R (Countryside Alliance) v Attorney General* [2007] UKHL 52; [2008] 1 AC 719 at [40] (and see [137]-[138] below);
- (5) When considering whether to make a DoI, the court has to identify the practical effect and the policy objective of the legislation for comparison with the Convention right. What is relevant is the underlying social purpose that the statutory provision seeks to achieve. That purpose is often self-evident, but where it is not, the court may need to look outside the statute to see the complete picture [173];
- (6) The court must decide whether the legislation satisfies a proportionality test: whether the means used by the legislation to achieve its policy is appropriate and not disproportionate in its adverse effects. Sometimes the court may need additional background material on the nature and extent of a social problem at which the legislation is aimed, so as to throw light on its rationale. That material may include a White Paper, statements made during a debate on a Bill, or explanatory notes published with a bill. But a ministerial statement should not be treated as synonymous with the objective intention of Parliament [174]-[175];
- (7) The courts are to have due regard to the enactment as an expression of Parliament's will; its proportionality is to be judged on that basis. Proportionality is not to be judged by the quality of the reasons advanced in the course of parliamentary debate, or the subjective thoughts of individual ministers or MPs. Members may have differing reasons for approving legislation, or differing views on its desirability or likely effect, which were not expressed during a debate. So, for example, a lack of a cogent justification for a measure from a minister does not count against its proportionality. The court is called upon to evaluate the proportionality of the legislation, not the adequacy of the minister's exploration of the policy options or of his explanations to Parliament. The court must not evaluate the sufficiency of the legislative process leading up to the enactment of the statute [176];

- (8) The degree of respect to be shown to the considered judgment of the democratic assembly will vary according to the circumstances. Relevant factors will include the subject-matter of the legislation, whether it is recent or dates from an age with different values, and whether “Parliament can be taken to have made its own judgment of the issues which are relevant to the court’s assessment”. If so the court will be more inclined to accept Parliament’s decision out of respect for democratic decision-making on matters of political controversy [178]-[180].
- (9) In order to decide whether legislation is compatible with Convention rights, the court usually needs to decide whether it strikes a reasonable balance between competing interests. If it can be *inferred* that Parliament formed a judgment that the legislation was appropriate, notwithstanding its potential impact upon interests protected by the ECHR, that may be relevant to the court’s assessment, because of the respect owed to the legislature’s view. If on the other hand there is no indication that Parliament considered that issue, that factor will be absent, but that will not count against the court upholding the compatibility of the measure. In that situation, the court will have to consider the issue, absent that factor, but paying appropriate respect to the will of Parliament as expressed in the legislation [182];
- (10) The court should go no further than to ascertain whether matters relevant to compatibility were raised during the legislative process, so as to avoid assessing the adequacy or cogency of Parliament’s consideration of them. A “high-level review” of whether a topic was raised *before* Parliament, whether in debate *or otherwise* should suffice. The court must not treat the absence or poverty of debate in Parliament as a reason supporting a finding of incompatibility [183]-[184].
- (11) The court may also take note of the efforts made by parties to campaign against legislation during its passage through Parliament, thus ensuring that their concerns were made known to Parliamentarians [179] and [185]. Referring to Lord Bingham in *Countryside Alliance* at [8], [40] and [45], this point applies also to consultation exercises and official reports leading up to the laying of the Bill before Parliament.
136. To that summary of principles we would add a reference to *Wilson* at [61]. When assessing the aims of a measure the court will look primarily at the legislation. On one level the objective of a measure is coincident with its effect. But a proportionality assessment is not so confined, it looks at the underlying social purpose sought to be achieved by the provision in question. It is for that reason that the court may need to look at broader background material.
137. The analysis in *Countryside Alliance* was to similar effect. There the court decided that the Hunting Act 2004 had a composite aim rather than a single aim. At [40], Lord Bingham noted that there had been “much argument” in the case as to the objects of the 2004 Act, which the Divisional Court had identified as being “a composite one of preventing or reducing unnecessary suffering to wild mammals, overlaid by a moral viewpoint that causing suffering to animals for sport is unethical and should, so far as practical and proportionate, be stopped”. That conclusion (which reflects the fact that, like human actions, legislative actions can have more than one object) was drawn from the terms of the legislation itself, an earlier Bill which Parliament had considered to be

inadequate, and various reports and Parliamentary hearings. The House of Lords held that the Divisional Court had been entitled to reach that conclusion by reference to background material, notwithstanding that “this rationale was nowhere expressed in the Act, that this did not reflect the Government’s intention in introducing the Bill and that virtually no Parliamentary statement expressed the rationale in this way.”

138. There was a difference between the parties in the present case as to how dominant the terms of the legislation are in identifying the objects of that legislation. We accept that they represent a starting point in the enquiry, and, where they clearly identify the object, this will carry significant weight (hence Lord Nicholls’ statement in *Wilson* at [61] that the court will look “primarily” at the legislation). But we accept Ms Wakefield KC’s submission that it is not appropriate to equate the object of legislation with the effect of legislation. This was the point made by Lord Nicholls in *Wilson*, [61] when observing that “at one level” the object of legislation “will be coincident with its effect ... but that is not the relevant level for Convention purposes” where what matters “is the underlying social purpose sought to be achieved.” As Ms Wakefield noted, the effect of legislation may reflect decisions as to how a particular, narrower object can most easily be achieved, rather than being an object in itself. Further, the identification of purpose for the purposes of the A1P1 enquiry is not, conceptually, the same exercise as the search for Parliament’s purpose or intention when undertaking the task of statutory interpretation. As Lord Sales observed in “Purpose in Law and Interpretation: the FA Mann Lecture”, Herbert Smith Freehills, 19 November 2024 at p.24:

“As in relation to the interpretation of a statute the identification of a legitimate aim also involves reference to Parliament’s purpose, but in this case assessed at a higher level of generality from a viewpoint external to the statute itself and the specific meaning to be given to it.”

139. That said, referring to a submission by Sir James Eadie, we would not expect to find that Parliament had an object which was “evidently much narrower than the terms and set up of the legislation” without a compelling case to this effect, based, for example, on non-statutory material and an explanation for any significant mismatch.

The width of the margin of appreciation

140. A1P1 provides that “no one shall be deprived of his possessions except in the public interest ...”. In this context, the Grand Chamber in *Hutten-Czapska* referred to “the principle of legitimate aim in the general interest”.
141. We accept the submission of Ms. Wakefield for the Wallace claimants that it is for the court to determine what was the aim (or were the aims) of the three measures under challenge, applying the principles set out above. Having done so, when it assesses the legitimacy of that aim, the court will respect Parliament’s judgment on the public interest unless it is “manifestly without reasonable foundation” (*Hutten-Czapska* at [166]). That expression simply reflects the wide margin of appreciation accorded to the socio-economic regulation of housing by the state (see *SC* at [159] and *Adriatic* at [114]).
142. In *James* the ECtHR gave a wide margin of appreciation to the UK’s enactment of the LRA 1967 ([46]-[47]). The decision to make laws authorising the expropriation of

property rights commonly involves political, social and economic issues on which opinions within a democratic society may differ widely. That has continued to be the approach in Strasbourg to the regulation of housing.

143. In *Wilson* Lord Nicholls said that the fairness of a system of law governing the contractual or property rights of private persons is a matter of public concern and so legislation intended to bring about such fairness is capable of being in the public interest, even if it involves the compulsory transfer of property from one person to another [68]. Then at [70]:

“In approaching this issue, as noted in *R v Johnstone* [2003] 1 WLR 1736, 1750, para.51, courts should have in mind that theirs is a reviewing role. Parliament is charged with the primary responsibility for deciding whether the means chosen to deal with a social problem are both necessary and appropriate. Assessment of the advantages and disadvantages of the various legislative alternatives is primarily a matter for Parliament. The possible existence of alternative solutions does not in itself render the contested legislation unjustified: see the Rent Act case of *Mellacher v Austria* (1989) 12 EHRR 391, 411, para 53. The court will reach a different conclusion from the legislature only when it is apparent that the legislature has attached insufficient importance to a person's Convention right. The readiness of a court to depart from the views of the legislature depends upon the circumstances, one of which is the subject matter of the legislation. The more the legislation concerns matters of broad social policy, the less ready will be a court to intervene.”

The court held that a bar to the enforcement of any loan agreement for failing to include a correct statement of the amount of credit pursued the legitimate aim of consumer protection and was not disproportionate, although it would provide a windfall to some borrowers who had suffered no prejudice at the expense of some lenders who had acted in good faith ([72]-[74]).

144. In *AXA* Lord Reed said at [131]:

“At the domestic level, the courts also recognise that, in certain circumstances, and to a certain extent, other public authorities are better placed to determine how those interests should be balanced. Although the courts must decide whether, in their judgment, the requirement of proportionality is satisfied, there is at the same time nothing in the Convention, or in the domestic legislation giving effect to Convention rights, which requires the courts to substitute their own views for those of other public authorities on all matters of policy, judgment and discretion. As Lord Bingham of Cornhill observed in *Brown v Stott* [2003] 1 AC 681, 703:

“Judicial recognition and assertion of the human rights defined in the Convention is not a substitute for the processes of democratic government but a complement to them. While a

national court does not accord the margin of appreciation recognised by the European court as a supra-national court, it will give weight to the decisions of a representative legislature and a democratic government within the discretionary area of judgment accorded to those bodies.””

145. In *SC Lord Reed* referred at [208] to the caution which a court should exercise if a case involves a matter of “intense political controversy”. It may be that the proportionality question cannot be answered by any process of legal reasoning and that it can only be answered in a Parliamentary democracy through a political process which can take into account the values and views of all sections of society. In such a case a democratically elected institution is in a far better position than the courts to reflect where the balance of fairness lies. This approach may apply where one aim of a measure involves distributive justice or redistribution (see the Court of Appeal per Leggatt LJ as he then was in [2019] EWCA Civ 615; [2019] 1 WLR 5687 at [158] and *R (ALR) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin) at [80]).
146. The claimants suggested that if the aims of the three measures did not involve meeting a “pressing social need”, the width of the margin of appreciation should be reduced in the assessment of proportionality and in the striking of a fair balance. They sought to draw a distinction between a measure meeting a pressing social need as opposed to one based merely on a “broad social policy”, the latter attracting less weight.
147. In order to support that argument Ms Wakefield relied upon *Lindheim*. As we have said, that case concerned s.33 of the Ground Lease Act 1996 as amended, a provision which the Court described as “essentially motivated by policy considerations” [11] with a cross-reference to [47]-[51]. Those paragraphs referred to a proposal by the Norwegian Ministry of Justice to address the impact of existing law on lessees unable to extend their leases, or to purchase their plots, by providing that lessees would be able to continue their lease agreements on the same terms. They relied upon “social policy considerations on the side of the lessee” as being “decisive” because of the financial difficulties in which lessees would find themselves if landlords could increase “ground lease rent up to the market level”. At [97], the ECtHR said that it appeared that in adopting this solution “Parliament attached considerable weight to social policy considerations in the area of housing.”
148. The Court appears to have linked Parliament’s reference to “social policy in the area of housing” with the background to a different provision of the Ground Lease Act, s.15, which was not under challenge but limited the contractual right to increase ground lease rents. The Court referred to a previous removal of controls on s.15 increases which had “made drastic inroads into a number of families’ and single persons’ household budgets”, and suggested that “presumably, this experience in relation to s.15 was also capable of shedding light on the social policy considerations militating in favour of the introduction of s.33” [98].
149. It is against that, with respect, somewhat unclear background that the Court contrasted at [99] and also [130] “addressing situations of potential financial hardship and social injustice” with “social policy in a broad sense” suggesting that s.33 “most likely” had a broader reach falling into the latter category. On the basis of this slender material Ms Wakefield sought to draw a distinction between what she referred to as “pressing social need” and “social policy in a broad sense”, with the latter having reduced justificatory

power. However, no authority, let alone clear and constant jurisprudence of the ECtHR, was cited to support this distinction in relation to A1P1. *Lindheim* is not an authority on this point. The decision was essentially based on the six points we have summarised at [101] above.

150. However, the House of Lords addressed this issue in the *Countryside Alliance* case. Lord Brown (with whom Lord Rodger and Baroness Hale agreed – see [90] and [121]) pointed out that the HRA draws a distinction between Articles 8 to 11 on the one hand and A1P1 on the other. The former prohibit interference with human rights such as respect for private and family life and freedom of expression, subject to restrictions which *inter alia* are “necessary in a democratic society”. That test does involve considering whether there is “a pressing social need” to justify the interference (see [45] and [120]). It is stricter than the “public interest” or “general interest” required to justify an interference with the rights protected by A1P1 ([155]-[156]). As Lord Brown pointed out, following *James* at [51], A1P1 does not contain a “strict test of necessity” unlike *inter alia* Art.8. Under A1P1 the weight to be given to a social need or policy is a matter for the legislature within its appropriate margin of appreciation.
151. That said, we accept that at the “fair balance” stage of the enquiry, the justificatory power of legitimate objects of legislation may vary. As Lord Sales observed in his FA Mann Lecture, p.23:

“If the legitimate purpose is broad, a wider range of interfering measures will be proportionate to achieving it. If the aim pursued is to promote a weighty public interest, it will be easier for the state to show that the interfering measure strikes a fair balance.”
152. Ms. Carss-Frisk submitted that the margin of appreciation should also be narrowed because of what she described as a retrospective effect of the legislation. In particular, she said that the Ground Rent Cap may reduce the landlord’s term value compared with his contractual right to receive ground rent to the end of the term. She suggested that this measure therefore retrospectively affects an existing contractual right.
153. The other two measures operate differently. Under the terms of the lease the landlord does not generally have a right to a share of marriage value if the reversion and the lease are merged, nor a right to be paid non-litigation costs in the event of enfranchisement. The landlord’s entitlements to a share of marriage value and to those costs arise, in the event of the tenant exercising a right to enfranchise, as incidents of the enfranchisement code before amendment by the LFRA 2024. Although a landlord would not receive any marriage value if a lease should run to the end of its term, Ms. Carss-Frisk says that a landlord had an expectation that in the event of enfranchisement taking place, it would receive a half share of marriage value and non-litigation costs, in addition to the term value without any cap. She says that the LFRA 2024 operates retrospectively in relation to that pre-existing contractual right and those two expectations.
154. We do not accept that the margin of appreciation in relation to all or any of the measures challenged should be reduced on account of retrospectivity. The general position is that legislation which affects existing rights prospectively is not retrospective or retroactive (see e.g. Lord Rodger in *Wilson* [2004] 1 AC 816 at [186]-[192]). The very purpose of legislation is to alter an existing legal situation, which will often involve altering

existing legal rights for the future. So a person does not have a right or expectation to the law continuing as it has stood in the past. For example, in tax law it is imperative that legislation conforms to changing social needs and government policy. A taxpayer may plan his financial affairs on the basis of existing tax laws remaining unchanged, but in doing so he takes a risk as to whether they do in fact change (*Wilson* at [192]).

155. AIP1 requires an interference with the protected right to be lawful. The ECtHR requires domestic law to be adequately accessible and sufficiently precise to be foreseeable in its effects (Lord Reed in *AXA* at [119]). But changes in civil law frequently and properly affect legal relationships established before the change was made, for example family law, and the rights and responsibilities of homeowners and employers. A person cannot expect the law affecting his position as a homeowner to remain unchanged during his period of ownership [120]. There are degrees of retrospectivity, a spectrum. A distinction may be drawn between laws which alter prospectively the rights and obligations arising from pre-existing legal relationships and laws which alter such rights retrospectively, for example, in relation to accrued or vested rights such as debts (see e.g. *Granada UK Rental & Retail Limited v Pensions Regulator* [2019] EWCA Civ 1032; [2020] ICR 747 at [55]-[66] and *Adriatic*). It may be more difficult to justify laws in the second category because they have a greater effect on legal certainty. Nevertheless, there may be such a justification, in particular where legislation has a remedial purpose (*AXA* at [121]).
156. It cannot be said that the present cases involve an interference with an accrued or vested right. The Ground Rent Cap does not affect a landlord's entitlement to ground rent which has fallen due before the valuation date, namely the date when the claim to enfranchise was made. Nor does it affect a landlord's right to continue to receive rent at that level for so long as the existing lease continues. The Ground Rent Cap simply regulates the terms on which a compulsory transfer of a proprietary interest may take place after the LFRA 2024 comes into force. It only applies to the assessment of the term value in relation to the residue of the term, which is forward looking and does not apply to rent already accrued due.
157. In relation to the measures removing a landlord's entitlement to half of any marriage value and to non-litigation costs, we have explained at [153]-[155] why the concept of retrospectivity is not engaged. We have not been shown anything to suggest that landlords were given an expectation by Government or by Parliament that the statutory code would remain unchanged. At the most it could only be said that landlords assumed, hoped, or took a risk, that the law would not be amended.
158. Ms. Carss-Frisk relied upon *In re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] UKSC 3; [2015] AC 10 where the House of Lords held that the legislation in issue had a degree of retrospectivity. But that legislation extended the liability of insurers to indemnify employers in respect of events which had already occurred, and under policies which they had underwritten, before the enactment. The legislation amended pre-existing contracts so as to cover loss which at the time of those contracts and of the loss in question was not recoverable (see e.g. [41]) by creating a liability for events which had already occurred at the date the statute came into effect.
159. By contrast, the measures under challenge in these proceedings apply prospectively to future claims to enfranchise and do not affect the rights between landlord and tenant in respect of past exercises of the right to enfranchise. In this respect, they are like the

LRA 1967 and the HA 1969 and 1974 which were considered in *James*, where it was not suggested that the reforms were retrospective for ECHR purposes and needed a particularly compelling justification for that reason.

160. Lastly on this subject we note that in its Valuation Report (see [217] below) the Law Commission said this at [3.96]:

“Moreover, landlords cannot assume that the existing valuation methodology, or existing legal regime, will continue indefinitely. The introduction of the first enfranchisement legislation in 1967 (which provided a favourable basis of valuation to leaseholders) would have significantly reduced the value of many landlords’ assets. Similarly, when the enfranchisement regime was extended to flats in 1993 and further expanded in 2002, that had significant implications for landlords. The law is reformed, and that has implications for very many people. Landlords cannot expect that the current valuation methodology will always remain the same. When investing, it is standard practice to consider the risk, and make allowances for risk. For example:

(1) there is a risk of higher taxes being levied on property owners who are not owner-occupiers; and

(2) when landlords have invested in ground rents, particularly onerous ground rents, they should have considered the risk of future regulatory intervention which could reduce their contractual entitlement to the ground rent.”

We agree with that passage, which has particular force given the legislative history and initiatives concerning this important area of social policy.

161. Taking into account the analysis below of the materials leading up to the enactment of the LFRA 2024 and the aims of the legislation, we conclude that a broad margin of appreciation should be given to the legislature’s enactment of the three measures under challenge. In summary:

(1) A broad margin is consonant with *James*, subsequent Strasbourg jurisprudence and the principles applied by our domestic courts to *inter alia* legislation regulating housing for reasons of socio-economic policy;

(2) The provisions under challenge and the enfranchisement code are general measures for the deprivation of property in pursuit of a process of economic, social or political reform and not “distinct expropriation” in the sense of compulsory acquisition for a particular development project or a micro-economic setting (see *Scordino v Italy (No.1)* above and *SRM* below);

(3) The subject of the measures is a matter for legislative judgment involving political considerations;

- (4) The aims of the measures include distributive justice and/or redistribution for social purposes;
- (5) The measures have been the subject of a long process of detailed analysis, consultation, reports, engagement and debate over several years. That process has addressed the justification for and effects of the measures, and the balance between landlords and tenants;
- (6) The measures express the will of Parliament enacted by recent primary legislation;
- (7) There is no consensus within the countries of the Council of Europe which indicates that the measures are unacceptable under A1P1, or which point to the adoption of alternative measures.
- (8) There are no factors which would make a narrower margin appropriate.

162. We will keep the margin of appreciation under review when considering the A1P1 issues specifically in relation to the measures challenged.

General rules or bright lines

163. The principle of lawfulness in A1P1 requires that the three measures are sufficiently accessible, precise and foreseeable in their application (*Hutten-Czapska* at [163]). This is also referred to as the principle of legal certainty.
164. In *James* the applicants complained that the LRA 1967 was indiscriminate. They pointed to evident differences between tenants of modest housing in South Wales and better-off tenants in Belgravia who could not be classified as needy or deserving of protection. They pointed to the large and wholly underserved gains which had been made by tenants who had enfranchised and then resold. The legislation produced effects which went far beyond its purpose ([29] and [68]-[69]). The applicants submitted that the legislation should have provided for independent consideration in individual cases of either the justification for enfranchisement or the basis for assessing compensation. The response of the ECtHR at [68] was:

“Such a system may have been possible, and indeed a proposal to this effect was made during the debates on the draft legislation. However, Parliament chose instead to lay down broad and general categories within which the right of enfranchisement was to arise. The reason for this choice, according to the Government, was to avoid the uncertainty, litigation, expense and delay that would inevitably be caused for both tenants and landlords under a scheme of individual examination of each of many thousands of cases. Expropriation legislation of wide sweep, in particular if it implements a programme of social and economic reform, is hardly capable of doing entire justice in the diverse circumstances of the very large number of different individuals concerned.”

At [69] the court added:

“The view taken by Parliament as to the tenant's 'moral entitlement' to ownership of the house, which the Court has found to be within the State's margin of appreciation, is one that applies equally to the applicants' properties in Belgravia. An inevitable consequence of the legislation giving effect to that view is that any tenant who sells the unencumbered freehold of the property (comprising house and land) after enfranchising is bound to make an apparent gain, since the price of enfranchisement, at least on the 1967 basis of valuation, did not include the house and the tenant has benefited from the so-called merger value. In addition, the broad sweep and scale of the redistribution of interests achieved by the reform mean that some anomalies, such as the making of 'windfall profits' by tenants who purchased end-of-term leases at the right time, are unavoidable. Parliament decided that landlords affected by the legislation should be deprived of the enrichment, considered unjust, that would otherwise come to them on reversion of the property, at the risk of a number of 'undeserving' tenants being able to make 'windfall profits'. That was a policy decision by Parliament, which the Court cannot find to be so unreasonable as to be outside the State's margin of appreciation. Neither does the operation of the legislation in practice, notably as illustrated by the 80 transactions concerning the applicants, show the scale of anomalies to be such as to render the legislation unacceptable under Article 1. Furthermore, in all the specific transactions complained of, even those where 'windfall profits' were made by tenants in onward sales, the applicants received the prescribed compensation for what Parliament considered to be their entitlement in equity as landlords. Any hardship as a result of the making of a 'windfall profit' was suffered not by the applicants, whose loss and compensation were unaffected, but rather by the predecessor(s) in title of the enfranchising tenant.”

165. As Lord Bingham pointed out in *R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15; [2008] 1 AC 1312, legislation cannot be framed so as to address particular cases; it must lay down general rules. A general rule means that a line must be drawn, it being a matter for Parliament to decide where. The drawing of such a line inevitably means that hard cases will arise falling on the wrong side of it. But such a rule is not invalid if, judged in the round, it is beneficial [33].
166. *In re JR 123* [2025] UKSC 8; [2025] 2 WLR 435 the Supreme Court endorsed the aim of a regime for the rehabilitation of offenders that the scheme should operate in as clear, simple and practical a manner as possible. It used a category-based approach in the interests of legal certainty to avoid the inconsistency inherent in a case-by-case approach to assessment.
167. By contrast, a lack of legal certainty in the operation of a rule may be taken into account in assessing whether a State has struck a fair balance for the purposes of A1P1 (see the Grand Chamber in *Hutten-Czapska* at [167]-[168]).

Less intrusive measures

168. The third of the *Bank Mellat* tests requires the court to assess whether less intrusive measures could have been used without unacceptably compromising the achievement of the objectives of the legislation. *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] AC 505 the Supreme Court held that even in relation to the particularly sensitive context of restrictions on political speech under Art.10 of the ECHR, the central question is not whether less restrictive measures *could* have been adopted, or whether the state can prove that its legitimate aim would not be achieved without its selected measure; rather it is whether in adopting its measure and striking the balance it did, the legislature acted within the margin of appreciation allowed to it [35(6)].
169. Similarly in *James* the ECtHR held at [51]:

“The availability of alternative solutions does not in itself render the leasehold reform legislation unjustified; it constitutes one factor, along with others, relevant for determining whether the means chosen could be regarded as reasonable and suited to achieving the legitimate aim being pursued, having regard to the need to strike a 'fair balance'. Provided the legislature remained within these bounds, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way.”

170. In *AXA* at [130] Lord Reed applied that passage to an AIP1 challenge to a statutory scheme whereby insurers became liable to indemnify claims concerning asbestos-related diseases. He said that although the legislature could have opted to use public funds to provide such compensation, that did not render the decision to impose the burden on insurers disproportionate.

The ab ante principle

171. Sir James Eadie submitted that each of the claims should be regarded as *ab ante* challenges to the legislation itself rather than to the application of the legislation to the facts of individual cases. It is said that the *ab ante* approach sets a high hurdle for a claimant to surmount. The defendant relied upon the principles laid down *inter alia* *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] AC 505 at [13]-[19]. Lord Reed PSC stated at [14]:

“The rationale of that approach is that where there is an *ab ante* challenge to a legislative provision (that is to say, a challenge to the provision in advance of its application to any particular facts), the striking down of the provision is only justiciable if the court is satisfied that it is incapable of being applied in a way which is compatible with the Convention rights, whatever the facts may be. If the legislation is capable of being applied compatibly with the Convention, then it will survive an *ab ante* challenge.”

The claimants stoutly resisted the defendant's contention.

172. The recent discussion in *ALR* of this subject at [99] – [108] suggests that the resolution of this issue in the present cases may not be straightforward. However, it is unnecessary for us to go further into the matter because even if it be assumed that the claimants are correct on the *ab ante* issue (an issue on which we would note the difference between the parties appeared to narrow significantly in the course of oral argument), we have reached the clear conclusion that they fail in relation to each of the incompatibility challenges to the measures in question, individually and cumulatively.

Indirect discrimination

173. The Portal claimants relied upon indirect or *Thlimmenos* discrimination based upon Article 14 of the ECHR (*Thlimmenos v Greece* [2001] 31 EHRR 15). *Thlimmenos* concerned a violation of Article 14 of the ECHR in conjunction with Article 9. At [44], the court stated that “the [Article 14] right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

174. Article 14 provides:

“Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”

In this case, we are concerned with “other status”.

175. We take the proper approach from Lord Reed's judgment in *SC* at [37]:

“(1) The court has established in its case law that only differences in treatment based on an identifiable characteristic, or 'status', are capable of amounting to discrimination within the meaning of article 14”

(2) Moreover, in order for an issue to arise under article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations.

(3) Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(4) The contracting state enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background.”

176. It is clear that an “other status” cannot be solely defined by the difference (or lack of difference) in the treatment complained of (*SC*, [68]-[71]). If a claimant can establish that they have been subject to discrimination, the burden shifts to the state to establish justification, which in the case of *Thlimmenos* discrimination requires justification of the lack of differential treatment (*ALR*, [128]-[129]). Where the discrimination is on so-called “suspect grounds”, the margin of appreciation enjoyed by the state will be considerably reduced. No “suspect grounds” are engaged in this case, in which the Portal Trust’s argument is that an exception should have been made for leases of multiple properties, as a proxy for leases to a tenant for business purposes.

177. In *SC* the Supreme Court pointed out at [162] that:

“It is also important to bear in mind that almost any legislation is capable of challenge under article 14. Judges Pejchal and Wojtyczek observed in their partly dissenting opinion in *JD* [2020] HLR 5, para. 11:

'Any legislation will differentiate. It differentiates by identifying certain classes of persons, while failing to differentiate within these or other classes of persons. The art of legislation is the art of wise differentiation. Therefore any legislation may be contested from the viewpoint of the principles of equality and non-discrimination and such cases have become more and more frequent in the courts.'

In practice, challenges to legislation on the ground of discrimination have become increasingly common in the United Kingdom. They are usually brought by campaigning organisations which lobbied unsuccessfully against the measure when it was being considered in Parliament, and then act as solicitors for persons affected by the legislation, or otherwise support legal challenges brought in their names, as a means of continuing their campaign. The favoured ground of challenge is usually article 14, because it is so easy to establish differential treatment of some category of persons, especially if the concept of indirect discrimination is given a wide scope. Since the principle of proportionality confers on the courts a very broad discretionary power, such cases present a risk of undue interference by the courts in the sphere of political choices. That risk can only be avoided if the courts apply the principle in a manner which respects the boundaries between legality and the political process. As Judges Pejchal and Wojtyczek commented, at para 10:

'Judicial independence is accepted only if the judiciary refrains from interfering with political processes. If the judicial power is to be independent, the judicial and political spheres have to remain separated.'

178. In *ALR* the Divisional Court, having reviewed the authorities on Article 14, stated at [135] that “when considering whether *Thlimmenos* or indirect discrimination on a ‘suspect’ ground is justified, the margin of discretion which should be accorded to Parliament, though somewhat narrower than under A1P1 taken on its own, is nonetheless relatively broad.” In the present case, when no “suspect ground” is in issue, it is broader still.

The requirement for compensation to be reasonably related to the value of the property taken

179. We return to the central issue in [31] above, the striking of a fair balance and the adequacy of the compensation which landlords will receive when the three measures come into force. Ms. Carss-Frisk submitted that the requirement for the compensation to be “reasonably related” to the value of the property taken “means, certainly in the present case,” as good as “full compensation” or “full market value”. She relied on two decisions to support this proposition.
180. First, she relied upon a short extract from *Urbárska* where at [115] the Chamber court said that in many cases of lawful expropriation only full compensation can be regarded as reasonably related to the value of the property. But the Court went on to add that legitimate objectives in the “public interest”, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of full market value. The reason for the Court’s brevity was given in footnote 16: it was content to rely upon the “exhaustive outline” of its case law on this subject in *Scordino v Italy (No.1)* at [95]-[98], to which we have referred. We also note that in this context the ECtHR at [113] also relied upon *James*.
181. Moreover, *Urbárska* was a case where self-evidently, the compensation for the deprivation bore no real relationship at all to the value of the property taken. It was based upon historic land values which substantially pre-dated large increases in property values resulting from the establishment of a market-oriented economy. Those historic land values amounted to less than 3% of market value at the time of the deprivation [124]. In addition, substitute land provided for the applicant was worth only a third of the market value of the land expropriated [125]. The Court referred to a balance between the scope and degree of importance of the public interest and the nature and amount of compensation provided to the persons concerned [126]. It found that the public interest relied upon was not sufficiently broad and compelling to justify the large difference in value imposed on landowners in that case ([132]-[133]). The claimants in our case have not attempted to argue that the LFRA 2024 adjustments to market value or the Costs Recovery Reform would be remotely comparable to the level of disparity in *Urbárska* or any other case cited in which there was a violation of A1P1. Nor would we have accepted such an argument.
182. The second authority cited by the claimants, *R (SRM Global Master Fund LP) v Treasury Commissioners* [2009] EWCA Civ 788; [2010] B.C.C. 558, contains the following important passage in the judgment of Laws LJ at [56]:

“For the purpose of A1P1 this process takes concrete form as follows. The paradigm case of a reasonable relationship between compensation and the property’s value arises, no doubt, where full market value is paid. In that case the relationship between the two is one of identity. That or something not far off is likely to apply in what may be called a “micro-economic” setting, where for example a single property is taken to achieve a specific and limited local objective. In such a case proportionality is likely to require market value or something close to it, and the margin of appreciation may offer little or no scope to justify the deprivation of property for less. But there will be other cases in which the objective of the deprivation is much broader: perhaps a matter of high politics. In such instances the policy aim of the measure in question may be diminished or undermined or even contradicted by a requirement of full market value. The measure’s intention may be to re-distribute wealth, or to achieve a necessary social reform, goals which are or may be perceived to be inconsistent with full compensation payable to the previous owner. In these cases, the margin of appreciation allows a flexible approach to the right protected by A1P1 which may give place to those aspects of the policy which override the case for payment of full value.”

This analysis accords with *Scardino (No.1)* at [95]-[98] and *Urbárska* at [126].

6. The concept of market value

183. Mr. Stephen Jourdan KC, appearing on behalf of the Abacus claimants, referred to an oft-cited passage from the judgment of Hoffmann LJ (as he then was) in *Lady Fox’s Executors v Commissioners of Inland Revenue* [1994] STC 360; [1994] 2 EGLR 185 dealing with the concept of open market value in a hypothetical transaction. The case concerned the valuation of an estate for the purposes of capital transfer tax, where the statute simply stipulated that the value should be the price which “the property might reasonably be expected to fetch if sold in the open market” on the valuation date.
184. Hoffmann LJ summarised how the courts have fleshed out bare provisions of that kind in legislation. Mr Jourdan relied upon this particular passage:

“In all other respects, the theme which runs through the authorities is that one assumes that the hypothetical vendor and purchaser did whatever reasonable people buying and selling such property would be likely to have done in real life. The hypothetical vendor is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business, negotiating seriously without giving the impression of being either over-anxious or unduly reluctant. The hypothetical buyer is slightly less anonymous. He too is assumed to have behaved reasonably, making proper inquiries about the property and not appearing too eager to buy. But he also reflects reality in that he embodies whatever was actually the demand for that property at the relevant time. It cannot be too strongly emphasised that,

although the sale is hypothetical, there is nothing hypothetical about the open market in which it is supposed to have taken place. The concept of the open market involves assuming that the whole world was free to bid, and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable.”

185. This approach is illustrated by *Inland Revenue Commissioners v Clay* [1914] 3 KB 466, where a property, in that case a house, had to be valued by assuming a hypothetical sale in the open market between willing parties. The court stated that the purpose of a bare assumption of that kind is to include demand from every person likely to wish to bid for the property. In *Clay* the value of the house for purchasers wishing to use it as a dwelling was £750. But the open market value had been correctly assessed as £1000, taking into account the motivation of an adjoining nursing home to acquire the property in order to extend their premises. Such a special bid forms part of open market value, subject to any statutory direction to the contrary.
186. The marriage value arising from the merger of a freehold reversion and a lease is another example of a special bid. It has been described as the additional value to the tenant of acquiring the reversion (*Lambe v Secretary of State for War* [1955] QB 612; *Waters v Welsh Development Agency* [2004] UKHL 19; [2004] 1 WLR 1304 at [37]).
187. In *Sportelli* Lord Walker stated at [34] that where assets have to be valued for a statutory purpose, Parliament’s usual technique is to start with a simple test of open market value, but to supplement that test by spelling out assumptions that are to be made about that market for the purposes of the hypothetical sale postulated. The LRA 1967 in both its original and amended forms adopted a statutory test of open market value, subject to assumptions [35]. Given that marriage value and hope value relating to a tenant’s bid for the reversion were central to *Sportelli*, Lord Walker must have had in mind *inter alia* the alteration to the LRA 1967 made by s.82 of the HA 1969 (see e.g. [49]. [54]. [81]). Thus, Lord Walker treated the term “open market value” as capable of embracing either the inclusion or the exclusion of marriage value attributable to the tenant’s bid for the reversion. Indeed, when Parliament excluded marriage value from the compensation payable to landlords, the HA 1969 amended s.9(1) by inserting the assumption disregarding any demand from the tenant to buy the reversion into a provision which expressly treated the hypothetical sale as a measure of open market value.
188. Similar flexibility in Parliament’s treatment of open market value can be seen in changes made over time to the legal rules on compulsory purchase compensation. In 1918 a Committee was established under Leslie Scott KC to carry out a review of compensation law, which resulted in the Acquisition of Land (Assessment of Compensation) Act 1919. Section 2 laid down the rules for valuing land acquired compulsorily by a Government Department or public authority under a statute. Rule (2) provided that the value should be assessed by assuming a hypothetical sale of the land in the open market between willing parties. Rule (3) required the valuer to disregard the special suitability of the land for any purpose *inter alia* “for which there is no market apart from the special needs of a particular purchaser”. That had the effect of disapplying the ratio in *Clay*, so, for example, a special bid from the owner of adjoining land to use the subject land for a purpose peculiar to that party was excluded from the award of compensation.

189. The rules in s.2 of the 1919 Act and subsequent legislation were carried forward into s.5 of the Land Compensation Act 1961. But ultimately, that part of rule (3) was repealed by s.70 of the Planning and Compensation Act 1991, so that from then on special bids of the kind addressed in *Clay* have been included in compensation for compulsory purchase. This legislative exclusion or inclusion of the value of a special bid in the measure of compensation was consistent throughout with the notion of open market value. It is a good example of Lord Walker’s analysis in *Sportelli* and, moreover, applies to the treatment of marriage value in the law of compensation for compulsory acquisition.
190. Mr Jourdan referred to another principle of compensation law, the *Pointe Gourde* or “no scheme” principle ([1947] AC 565 and *Waters*): the enhancement (or depreciation) in the value of the acquired land solely attributable to the scheme for which the land is expropriated, and the acquiring authority’s special need to use the land for that purpose, are to be disregarded. Mr Jourdan submitted that such an adjustment to market value is reasonably related to market value because the effect of the disregard is to produce fair compensation for the landowner. He sought to distinguish the provisions of the LFRA 2024 because they remove substantial elements from the price payable in an open market sale of the landlord’s reversion simply to make the purchase cheaper for the purchaser. The short answer is that the *Pointe Gourde* principle does not lend any support to the claimants’ case, because that principle applies in terms to a compulsory purchase for a project, i.e. a “distinct expropriation”. Indeed, Mr Jourdan went on to accept that the concept of a value reasonably related to market value for the purposes of A1P1 depends on the context of the valuation measure, including its aims, which may include social or economic purposes (see *Scordino v Italy (No.1)*) and the distinction referred to at [107] and [179]-[182] above).
191. The parties have referred to professional standards that address the concept of open market value, notably the RICS’s Valuation – Global Standards (“the Red Book”) and International Valuation Standards. These documents do not assist the court to resolve the issues before it, beyond reflecting the width of the concept of “market value” and the different manifestations of the same general concept. They were not prepared to guide a legislative and political decision on, for example, whether landlords should receive a share of marriage value as part of the price payable for enfranchisement. Nor were they intended to address the issue of whether the inclusion or non-inclusion in that price of a share of marriage value affects the striking of a fair balance for the purposes of A1P1. It has not been shown that the RICS documents assist on the question of whether enfranchisement compensation with the three disputed measures in place would “reasonably relate” to the value of the property taken, as discussed by Laws LJ in *SRM* at [56]. We must focus on the principles laid down in the jurisprudence on the meaning and application of A1P1.
192. As we have said, the rationale for developments in enfranchisement law after the LRA 1967 ceased to use the language of “moral entitlement” and the landlord’s compensation was no longer limited to site value. But the economic fundamentals have remained essentially the same (see [114]-[115] above). Leaseholds still represent a wasting asset for tenants, although they have paid a premium which takes into account the cost or value of the dwelling as well as the land and they generally pay for maintenance of, and improvements to, the property throughout the term, as well as some

ground rent. Government and Parliament have continued to grapple with what is considered to be a socio-economic imbalance or injustice.

193. Returning to the principles in *Scordino v Italy (No.1)* and *SRM* ([107] and [179]-[182] above), the three measures under challenge are not concerned with “distinct expropriation” or a “micro-economic” setting, where one or a limited number of properties are taken for a specific purpose in a specific location, such as an infrastructure project. Instead, the measures form part of a process of social and economic reform to the relationship between landlords and tenants in respect of long leases of dwellings, a matter of high policy. In this context, the defendant submits that the policy aims of these measures would be undermined or contradicted by a requirement that compensation be based on *full* market value.

7. The evolution of the measures under challenge

194. The CLRA 2002 and the more limited amendments which followed it did not bring an end to the enduring topic of leasehold reform. In July 2016, the Law Commission began consultation on its Thirteenth Programme and identified leasehold as a potential area for reform. That heralded a period of intense scrutiny of this issue, by the Law Commission and various bodies, which led up to the LFRA 2024. Both sides have referred to parts of that material that they wished to emphasise. Even in a judgment of this length, it is impossible for us to capture every possible reference which might assist either side. Instead, we have sought to give a fair summary of the overall content of this material with a level of detail appropriate for understanding the objects of the reforms and their justification as inputs to the AIP1 enquiry. But throughout we have borne in mind the need to read the material as a whole.

The Law Commission embarks on a further leasehold reform project

195. In December 2017 the Law Commission published its report entitled “Thirteenth Programme of Law Reform” (No.377). The residential leasehold project was to begin by addressing three priority areas identified by Government. The first related to a review of commonhold, why it had failed so far and what reforms are needed for it to operate successfully, the second to leasehold enfranchisement and the third to unfair terms in residential leaseholds (including ground rents). The Law Commission referred to “an extensive list of highly significant problems with residential leasehold law”, and to a number of consultees who had criticised the “inconsistency, complexity and (many say) unfairness in the legislation governing enfranchisement” ([2.32]). The Commission said that in relation to enfranchisement it would “look at ways to simplify the procedure and make the valuation fairer and more transparent” ([2.33(2)]). The Commission also noted that the usual provisions for regulating unfair terms in contracts were of limited assistance, because only the original tenant was effectively able to challenge the fairness of a term by virtue of the circumstances in which it was agreed ([2.46]). When referring to concern about unfair terms in residential leases, the Law Commission acknowledged the work in this area of the APPG.

Contributions from Government and Parliament

196. On 20 December 2016, issues concerning the level of ground rents and the cost of enfranchisement (including associated legal costs) were raised during a House of Commons debate initiated by the APPG.

197. In February 2017, the Government published a White Paper entitled “Fixing our broken housing market” (the “2017 White Paper”). The foreword by the Secretary of State for Communities and Local Government referred to the insufficiency of homes in the UK, and was principally concerned with the construction of new houses. However, it also addressed leaseholds, referring to the Government’s intention “to promote fairness and transparency for the growing number of leaseholders”. It suggested that some purchasers of leaseholds might not understand the long term financial implications of leasehold ownership, including “increasing and onerous payments” and tenants being left in the dark about the on-selling of ground rents. This was said to be “not in consumers’ best interests” ([4.36]), with ground rents with short review periods a particular concern ([4.37]). The 2017 White Paper highlighted the Government’s commitment to “consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold” ([4.37]). Paragraph 4.38 stated:

“We will consider further reforms through the consultation to improve consumer choice and fairness in leasehold, and whether and how to reinvigorate Commonhold. We will also work with the Law Commission to identify opportunities to incorporate additional leasehold reforms as part of their 13th Programme of Law Reform, and will take account of the work of the All-Party Parliamentary Group on Leasehold and Commonhold.”

The concerns expressed about “unfair and unreasonable abuse of leasehold” were much broader than simply leasehold enfranchisement. Furthermore, they do not appear to be limited to owner-occupier tenants, but refer to issues also likely to be faced by those buying a leasehold property for a purpose other than immediate personal occupation.

198. In June 2017, the APPG published a preliminary report on improving key areas of leasehold and commonhold law. The APPG had concluded that the existing law in the leasehold sector faced “a number of difficulties” and contained “a number of important defects”. The APPG referred to the growing number of leasehold properties where freeholds are sold on, and to the increasing costs of obtaining a landlord’s permission for particular actions required under a lease. The APPG cited data to suggest that the disadvantages of leasehold as against freehold ownership were not fairly reflected in the market price (figure 2). Reforms suggested included banning leaseholds for new build houses, limiting the growth of ground rents during the life of a lease, the replacement of residential forfeiture, and four recommendations on enfranchisement reforms such as moving the costs of enfranchisement to a formulaic model that did not require mediation by the tribunals, removing the two-year ownership requirement and changing the “costs balance” in respect of tribunal cases. The APPG report did not draw any distinctions between tenants in personal occupation of their properties and other tenants.
199. The 2017 UPP referred at [1.1] to leasehold as a “significant and increasing tenure for new homeowners”, but the statistics cited covered all residential dwellings, whether the tenant was in occupation or not. The Government sought views on, among other topics, prohibiting the sale of leaseholds of new build houses, restricting ground rents on new leases to peppercorn rents and tackling existing onerous ground rents (page 4). As with other materials, the 2017 UPP uses the language of “consumer”, but in terms which do not draw an obvious distinction between occupying and non-occupying tenants. Thus at [3.5], the paper referred to doubts that the “leasehold discount” (a reference to the

difference between the value of a freehold and a leasehold interest in the same house) is passed on by the developer “to the consumer”, and [3.7] referred to there being “1.2 million leasehold houses in the owner-occupied and private rented sectors in 2014/2015.” When addressing “the impact on consumers”, the paper identified a series of issues capable of impacting occupying and non-occupying tenants alike: it was not clear that any initial ‘discount’ on the sale price of a leasehold house reflected the additional costs faced by a tenant such as continuing and increasing ground rent, fees for consents to alter a property and the financial impact of extending the lease or buying the freehold at later time ([3.12]); and the fact that the identity of the landlord may change without their knowledge ([3.13]). The proposal to limit the reservation and increase of ground rents on all new residential leases over 21 years was justified on the basis that “leaseholders receive no return or value for the ground rent, in contrast to payment of service charges ...” ([4.2]) and because of the problem with clauses with escalating ground rents ([4.6]).

200. The consultation closed on 19 September 2017, having received over 6,000 replies, and the Government published a summary of the responses in December 2017. The introduction by the Secretary of State for Communities and Local Government criticised the way in which leasehold ownership operated in practice in general terms:

“Leasehold should be just that, a tool for making multiple ownership more straightforward. It should not be a means of extracting ever-more cash from the pockets of already over-stretched housebuyers. Yet in the hands of unscrupulous freeholders, that is exactly what it has become.”

201. While there were a number of references to “homeowners” or “homes”, there were also references to issues capable of impacting on all tenants: “disproportionate costs to extend leases; poor value property management; and a slow and costly sales process” ([2]); a consultation on “proposals to regulate managing agents and give consumers a say over who their agent is” ([5]); and re-invigorating commonhold as an alternative ownership structure ([6]). As for enfranchisement, the Government stated, “we will also be working closely with the Law Commission on a wider programme of reform including...making it easier and more cost effective for all leaseholders to enfranchise...” ([6]). The Government expressed doubt as to whether the full costs of buying a house on leasehold were “priced in” ([35]), and referred to “inconsistent and inadequate protections for leaseholders who either may not wish to, or may be unable to, buy their freehold” ([37]), and that it would “consult on proposals to support leaseholders to [enfranchise] on more favourable terms” ([38]). New legislation would be introduced so that ground rents in new leases of houses and flats would be fixed at a peppercorn [69]. The Government stated that it wanted “to make it easier for leaseholders to be able to exercise their right to buy their freehold... and for this right to be available as soon as possible” and that it would “work with the Law Commission on this and consult on introducing a prescribed formula that provides fair compensation to the landlord, whilst also helping leaseholders avoid incurring additional court costs” ([72] and [86]).

The Law Commission Consultation Paper No.238

202. On 20 September 2018 the Law Commission published the Consultation Paper.

203. First, the Consultation Paper points to issues inherent in leasehold as a model of property ownership. Thus at [1.2]:

“So we refer to ‘buying’ or ‘owning’ a house or flat. But when we buy on a leasehold basis, we are in fact buying a house or flat for a certain number of years (after which the assumption is that the property reverts to the landlord). A leasehold interest is therefore often referred to as a wasting asset: its value tends to reduce over time, as its length (‘the unexpired term’) reduces.”

204. The Terms of Reference (“ToR”) refer to providing “a better deal for leaseholders as consumers”. “Our proposals for reform of enfranchisement are therefore intended to make the law work better for *all* leaseholders” (emphasis added, a word of potential significance given the prior breakdown of the leasehold market at [1.8] – see below). The Commission referred to the fact that in many countries flats are held by strata or condominium title and the concept of leasehold does not exist. Alongside their work on enfranchisement, the Law Commission was carrying out a separate project to consider legal issues with commonhold legislation which were affecting market confidence and the workability of the legislation, with a view to recommending reforms that would reinvigorate commonhold as an alternative to leasehold for both existing and new homes ([1.13]-[1.14]). The Consultation Paper contained an extended discussion of what some saw as “the inherent unfairness of leasehold tenure” and the wasting asset problem ([1.39] *et seq*), with references to “the diminishing value” of the leasehold interest, and the increasing cost of acquiring the freehold over time ([1.40] and [1.42]).
205. Second, the Consultation Paper emphasised the width of the proposed review ([1.7]). The ToR referred to nine policy objectives for the reforms to be recommended by the Commission, two general, six for leasehold enfranchisement and one for commonhold. The general objectives included “to promote transparency and fairness in the residential leasehold sector” and “to provide a better deal for leaseholders as consumers”. Those and other objectives were broadly phrased: simplifying the legislation; and examining “the options to reduce the premium (price) payable by existing and future leaseholders to enfranchise” and making enfranchisement “easier, quicker and more cost effective”.
206. Third, the Consultation Paper refers on a number of occasions to “leaseholders as consumers” (e.g. [1.53]), picking up language in the ToR in which one of the general “policy objectives” is “to provide a better deal for leaseholders as consumers”. The language of the nine policy objectives does not refer to or focus upon the dwellings of resident occupiers. As to who the Law Commission had in mind at the initial consultation stage:
- i) Of the 4.2m leaseholders of both houses and flats, 2.2m were owner occupiers, 1.8m were privately owned and let in the private rented sector and 0.2m were owned by social landlords and let in the social rented sector [1.8];
 - ii) The project was concerned not only with abusive practices but also long-standing concerns about leasehold and the Commission intended that its proposed reforms of enfranchisement would make the law work better for “all leaseholders” [1.23];

- iii) At [1.63(2)], the variety of leaseholders were noted: “ordinary home-owners (ranging from those with limited means through to very wealthy owners); non-resident owners (such as buy-to-let landlords, those with a second home; those who have invested in property) and some speculative investors and developers who purchase flats with a view to exercising enfranchisement rights and profiting from selling on the enhanced interest”;
 - iv) At [1.64], the Law Commission said of one of the objects in the ToR that “Government’s desire to reform the enfranchisement regime to provide a better deal for leaseholders as consumers is, of course, directed at individual home owners rather than investors”. This is supportive of the claimants’ submission that the word “consumer” is intended to focus on “ordinary home-owners” and perhaps “those with a second home”, rather than “buy-to-let landlords”, “those who have invested in property” or “speculative investors and developers”;
 - v) There are other passages which focused on the last category in [1.63(2)]: investors who purchase with a view to realising profit from enfranchisement to consider whether they should be treated differently (e.g. [8.12]), noting that enfranchisement, and the Commission’s focus, was “primarily directed” at those using their property or properties residentially [8.13];
 - vi) The Law Commission consulted on the possibility of cutting down the enfranchisement rights of commercial investors (i.e. on the right to enfranchise at all, rather than adjusting the terms of the price payable) at [3.20] and [8.185]-[8.193]. But having regard to potential “knock on” consequences on the property market and the wider economy, the difficulties of formulating a workable definition and preventing “work arounds”, the Commission thought it would be “extremely difficult” to exclude commercial investors from enfranchisement rights altogether [8.191]. It was also noted that commercial investors include pension funds and charitable trusts. However, although it was contemplated that the legislation might distinguish between occupational and some non-occupational investors, the suggestion that existing rights to enfranchise might be reduced did not gain any traction. We have seen no material to suggest that was merely because of difficulties in formulating workable provisions, as opposed to the absence of support for such a legislative object;
 - vii) However, one suggestion for differentiating between different types of leaseholder which was discussed in the Consultation Paper proved more durable, and was a point of live contention at this hearing: whether there should be differential pricing for commercial investors seeking to enfranchise as against owner-occupier leaseholders.
207. It is relevant to note how this issue first arose. The objects in the ToR (identified at [14.5]-[14.6]) included examining options for reducing the price for existing and current tenants; introducing a clear prescribed calculation methodology; simplifying the legislation and making enfranchisement easier, quicker and more cost effective. The first of these objects also required the Commission to ensure that sufficient compensation was paid to landlords to reflect their legitimate property interests. These specific objects were framed in the context of one of the general objects of the ToR, “to provide a better deal for leaseholders as consumers”.

208. Fourth, the Consultation Paper identified criticisms of the current law on valuation:
- i) The current law did not fairly balance the competing interests of landlords and tenants, both as to the valuation method and the effect of ground rents ([14.90]-[14.95]), noting that reforms relating to the terms of future leases would not benefit those “who already own a leasehold house.”
 - ii) The complicated and expensive nature of the enfranchisement procedure, and its capacity to generate disputes ([14.96]-[14.98]).
 - iii) Numerous other criticisms of the current law, simply taken as a valuation process on its own terms rather than its effect on tenants of a particular kind (see [14.99]-[14.106]).
209. Fifth, in circumstances in which any reduction in premium would reduce the compensation received by landlords ([14.9]), that left the issue of “sufficient compensation” which was addressed in chapter 15.
- i) That required the Law Commission to consider the jurisprudence concerning A1P1 ([15.4]-[15.17]);
 - ii) In the context of that discussion, the Law Commission raised the issue of differential pricing for different types of tenants ([15.30]-[15.36]);
 - iii) Two points were made on differential pricing. The first was that differentiation might be a means of complying with A1P1, “depending on how the Government chooses to reform valuation” and what social policy object the Government was pursuing in the legislation ([15.33]), and the extent of any change to the law on valuation. The same point was made at [3.36(3)], where it was noted that “differentiating between leaseholders might be considered *if* the Government wishes to lower the premium payable by homeowners to a level that would not be justified for any other type of purchaser”, implicitly recognising that there might be justifications for lowering the premium to a lesser extent for all tenants;
 - iv) The second and distinct point repeated the concerns expressed earlier as to the difficulties of differentiation between types of tenant, its implications for the object of simplification and how a two-tier compensation system could distort the market ([15.34]-[15.35]);
 - v) Against that background, the Consultation Paper proposed a number of possible approaches to valuation:
 - a) The adoption of a simple prescribed formula for the calculation of the enfranchisement premium, which would move away from attempting to identify a market value:
 - i) A ground rent multiplier, whereby the premium paid is a multiple of the ground rent; or
 - ii) a percentage of the freehold value of the property;

referred to as “Option One”, which were regarded as more susceptible to an A1P1 challenge ([15.42], [15.52]);

- b) A variety of valuation options based on the existing methodology which would reduce the premium payable, including capping the level of ground rent used to calculate the premium (for example at 0.1% of freehold value); and prescribing capitalisation and deferment rates; and the removal of marriage value (Option 2A). In discussing the removal of marriage value, so as to leave the landlord with term value and reversion value, it was noted that “this is the minimum an investor bidding in the market would pay the landlord to purchase his or her interest”, and would reflect “what the landlord would receive if the lease ran its course” ([15.92]);
 - vi) In order to make enfranchisement easier, quicker and more cost effective, the Commission envisaged that a simplified valuation method could be supported by an online calculator [15.104].
210. Sixth, the Law Commission recognised that reductions in the price for enfranchisement would involve a financial loss to landlords, and that this involved “considerations of law, valuation and, ultimately, political judgment” ([1.59]-[1.60]). They acknowledged a potential range of objects for enfranchisement reform legislation, with the choice of those objects and the implications for the legislation pursued being political issues for Parliament. Given that, and the structure of the Consultation Paper as a whole, we do not consider that it would be appropriate to treat the Law Commission as “ruling in” or “ruling out” any particular object at that stage.
211. Seventh, the Consultation Paper considered the issue of non-litigation costs in chapter 13. Noting that these were likely to be higher when the right to purchase arose by statute ([13.2]), the policy objective referenced in connection with this reform was to make enfranchisement “easier, quicker and more cost effective particularly for leaseholders”. Various criticisms of the current law were outlined ([13.35]-[13.39]). The matters identified in support of the proposed reform referred not to any particular type of leaseholder, but to the lack of justification for the landlord’s existing entitlement to be paid their costs, the pressure placed on all leaseholders by ownership of a wasting asset (referred to at [13.53(1)] as an “inherent weakness”), and the inequality of bargaining power which followed from this ([13.52(1)]). The Law Commission noted that the arguments in respect of non-litigation costs were finely balanced and asked for consultee views on potential reforms (including fixed costs and capped costs).
212. As part of its consultation exercise, the Law Commission held various public events around England and Wales in order to explain its reform proposals and obtain views. The Law Commission also met with different groups of stakeholders to hear their views about reform and invited leaseholders to respond to a Leaseholder Survey on their experiences of exercising enfranchisement rights, with over 1,500 responding to the latter. Stakeholder events included a symposium at University College London on 5 November 2018. One of the claimants, Cadogan, also hosted a stakeholder event for the Law Commission on 5 December 2018. The consultation closed in January 2019 and received in excess of 1,100 responses.

Further Government and Parliamentary activity

213. In October 2018, the Ministry of Housing, Communities and Local Government (“MHCLG”) published a consultation paper, “Implementing reforms to the leasehold system in England”. The Ministerial foreword contained the familiar references to “homes” and “home ownership”, but also referred to “taking a fundamental look at the way the leasehold market works with fresh eyes to make sure people have a choice of housing tenure that works for them, rather than accepting carte blanche the way things have been done in the past.” The consultation related to proposed controls on the use of leasehold in newbuild houses, including ground rents.
214. The aim of the HCLGSC Report was to build on the Law Commission’s work, including assessing whether the reforms proposed by the Government at the time went far enough. Evidence was submitted to the Select Committee on behalf of some of the claimants in the present claim. The HCLGSC Report contained a number of references to “leaseholders as consumers” or “occupiers”, but also as “customers”. Leases were referred to as a “wasting asset” ([10]), and the report referred to a desire to replace leasehold with commonhold ([42]-[43]). The report made certain factual findings on which both sides have sought to rely. As they relate to disputed factual matters, we accept the Speaker’s submission that they cannot be relied upon for the purpose of establishing the truth of any of the facts stated (see *ALR* Annex B at [88]).
215. In June 2019, the Government published a summary of consultation responses and the Government’s response in relation to the MHCLG consultation on reforms to the leasehold system in England launched in October 2018. Having taken into account responses to a proposal that ground rent be capped as a general rule at a maximum value of £10 a year, the Government stated that it would “legislate to restrict ground rents to a peppercorn (zero financial value) in future leases” ([3.10]). It took the view that generally, ground rent is unconnected to any maintenance obligations, which are instead financed through service charges ([3.11]).
216. The Government responded to the HCLGSC Report in July 2019, noting that the Law Commission will “recommend reforms to make the enfranchisement process simpler, easier, quicker and cheaper, including setting out the options that are available to reduce the premiums payable by tenants, whilst ensuring that sufficient compensation is paid to landlords” ([96]).

The Law Commission Valuation Report (No.387)

217. On 30 November 2019, the Law Commission obtained a legal opinion from the late Catherine Callaghan KC on the compatibility with A1P1 of various options for reform. The opinion was later published alongside the Valuation Report. It is not necessary to set out the advice given on particular issues, but we were referred to [60] of the opinion:

“A key factor affecting the compatibility of the scheme with A1P1 will be the aims and objectives of the eventual scheme. For example, if the primary aim of the scheme is to remedy perceived injustice faced by leaseholders, that will have a bearing on the scope of the reforms (including the identity of those who are to benefit from the reforms) and will feed into the assessment of proportionality, including the degree of scrutiny

(or conversely, deference) the courts will apply to the scheme. If the Government's aim is to reform the leasehold enfranchisement system in order to make enfranchisement more simple, quick and cost-effective, that will change the scope of the scheme and the proportionality assessment accordingly. If the Government's aims are more ambitious – for example, deliberate redistribution of wealth from one group (landlords) to another (leaseholders) or even ending the system of leasehold altogether – that will also feed into the nature and scope of the scheme and the assessment of where the fair balance is to be struck in terms of compensation.”

218. Similarly, when addressing the abolition of marriage value at [100], the opinion notes that the objects of any reform will have significant implications for any A1P1 analysis. These observations are consistent with the approach taken in the Consultation Paper (see [210] above). The Law Commission had not sought at that stage to define what the objects of the eventual legislation would be. It noted that the Government might seek to advance a number of different objects through reform in this area, but the particular object(s) which it decided to pursue would be relevant not only to the terms of any legislation but also its A1P1 implications.
219. On 8 January 2020 the Law Commission published a report dealing with valuation entitled “Leasehold home ownership: buying your freehold or extending your lease - Report on options to reduce the price payable” (Law Com No 387) (the “Valuation Report”). The Valuation Report was published in advance of the report on other areas of proposed reform because the Government had asked the Law Commission to prioritise its consideration of this issue. The claimants relied on the reference to “home ownership” in the title, but when the Valuation Report is read fairly and as a whole, the objects of the analysis and recommendations were not confined to improving the position of tenants who are resident occupiers. The object in the ToR which the Valuation Report addressed – “to examine the options 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” – was not confined to tenants of any particular type. However, having regard to A1P1, the Valuation Report considered whether “sufficient compensation” payable to landlords might vary for different types of tenant.
220. The Law Commission’s approach to identifying the objects of any reform, and the means by which those objects might be realised, reflected the political sensitivities of some of the issues.
221. Early on in its Valuation Report at [1.9]-[1.10] the Commission identified fundamental problems with leasehold ownership:

“1.9 So we refer to “buying” or “owning” a house or a flat. But when we buy on a leasehold basis, we are in fact buying a house or flat for a certain number of years (after which the assumption is that the property reverts to the landlord). A leasehold interest is therefore often referred to as a wasting asset: whilst it may increase in value in line with property prices, its value also tends to reduce over time as its length (the “unexpired term”) reduces.

There comes a point when the remaining length of the lease makes it unsaleable, because purchasers cannot obtain a mortgage (since lenders will not provide a mortgage for the purchase of a short lease).

1.10 In addition, leasehold owners often do not have the same control over their home as a freehold owner. For example, they may not be able to make alterations to their home, or choose which type of flooring to have, without obtaining the permission of their landlord. The balance of power between leasehold owners and their landlord is governed by the terms of the lease and by legislation.”

The Commission referred to existing enfranchisement rights as having gone “some way” to overcoming the problem of owning a wasting asset [1.13].

222. The Valuation Report rehearsed arguments on the inherent unfairness of leasehold interests and the counter-arguments ([1.20]-[1.21] and [3.4]-[3.10]). The Report noted the following:

“Some landlords have suggested that the strong views that we have heard from leaseholders are not representative of all leaseholders, and that reform should not be based on the unrepresentative view of an aggrieved minority.”

The Commission said that they did not agree with that view and went on to refer to evidence of widespread dissatisfaction amongst leaseholders as well as the concerns of a substantial number of MPs who are members of the APPG [3.4]. At [3.11] the Commission said:

“These competing views are genuinely held and irreconcilable. Decisions about which side to favour, and how to strike the balance between the competing interests, depend to a large extent on political judgment”.

223. At [3.60]-[3.99] the Commission rehearsed the rival views on whether enfranchisement premiums should be reduced. It did not express a view of its own on whether premiums should be reduced, stating that that question “involves considerations of law, valuation, social policy and, ultimately, political judgment” (see [4.1]).
224. By contrast, the Law Commission did express views on the complexity and unpredictable nature of the current process for fixing the enfranchisement premium, the unequal positions of landlords and tenants *as a class* within that process, and the problem of onerous ground rents ([3.12]-[3.58]).
225. In Chapter 5, the Law Commission summarised the responses to Options 1 and 2 as set out in the Consultation Paper. So far as Option 1 was concerned, while acknowledging strong support for Option 1A from tenant consultees in particular, the Law Commission stated that the Option 1 proposals were very unlikely to be compatible with A1P1, and therefore they were not put forward as options for a new valuation scheme aimed at reducing premiums ([5.33] and [5.42]).

226. Instead, the Commission advanced three alternative “Schemes” which reflected “three different assumptions about the market in which the landlord’s interest is being valued” [5.85] and [5.90]-[5.91] (the approach to which Lord Walker referred in *Sportelli* – see [187] above):
- i) “Scheme 1”: it would be assumed that the tenant is never in the market, with the result that no marriage value or hope value would be payable;
 - ii) “Scheme 2”: it would be assumed that the tenant is not in the market at the valuation date but may be in the future, with the result that hope value (but not marriage value) would be payable;
 - iii) “Scheme 3”: it would be assumed that the tenant is in the market, reflecting the landlord’s entitlement under the current law to a share of marriage value.
227. At page 15 of the summary of the Report, the Law Commission said that:
- “each scheme results in a premium that can be described as the ‘market value’ of the landlord’s asset, by reference to that assumed market. It is what the landlord can expect to receive for his or her interest in that market.”
228. At [5.101] and [5.102] the Commission referred to arguments for and against taking into account, or disregarding, the tenant’s special bid (see [400] below). At [5.103] the Commission described the benefits of Scheme 1 as providing compensation to landlords based on a market value of their interest and reducing premiums for tenants with terms having 80 years or less to run by removing marriage value from the sum payable.
229. In Chapter 6 of the Valuation Report, the Law Commission identified various measures which could be used in combination with any of the above approaches:
- i) “Sub-option (1)”: Prescribing rates (including capitalisation and deferment rates) to be used in valuing different elements of the premium so that consistent rates are used across all valuations;
 - ii) “Sub-option (2)”: Capping the treatment of ground rent at 0.1% of the freehold value of the property, with any ground rent in excess of that being disregarded;
 - iii) “Sub-option (3)”: A restriction on payment of development value;
 - iv) “Sub-option (4)”: Differential pricing for owner-occupier tenants as opposed to commercial investors.
230. In introducing this topic, the Valuation Report stated at [6.180]:
- “In so far as our Terms of Reference require us to improve the position of leaseholders as consumers and reduce premiums, they are aimed at improving the position of home-owners as opposed to leaseholders who own a lease as an investment”.
231. The suggestion that the ToR objective of reducing premiums is solely aimed at home-owners, and not tenants who own a lease as an investment, does not appear from the

ToR themselves. When addressing this topic, the Law Commission noted that differential pricing might justify a lower premium for owner-occupiers which nevertheless complied with A1P1 ([6.183]), but they identified arguments which “lean against making such a distinction” ([6.185]), including difficulties of definition and additional complexity ([6.196]), unfairness for some landlords and for some tenants ([6.197]-[6.198]) and possible distortions of the market ([6.200]). The Law Commission’s conclusion was that there were “significant drawbacks” in differential pricing as between different categories of leaseholder, but “it would be possible to do so”, making the point that the desirability of this course would depend on the Government’s legislative choices and their A1P1 implications ([6.202]-[6.203]):

“If Government wishes to reduce premiums to a level that cannot be justified under A1P1 if it applied to all leaseholders, then it would be necessary for Government to create such a distinction.

...

If Government does decide to differentiate between different categories of leaseholder, there are various ways in which the distinction could be framed ... The best way to do that depends on Government’s objective in giving owner-occupiers a more favourable basis of valuation.”

232. Although the Law Commission identified a number of possible objects of reforming legislation, and noted the potential implications of the objects for A1P1 purposes, it made it clear that it was for the Government, and ultimately Parliament, to determine what the objects should be. Nevertheless, by the time the Law Commission produced its final report in July 2020, its thinking on the inherent defects of leasehold and the imbalance between landlords and tenants had crystallised (see below).

CMA involvement

233. On 28 February 2020 the CMA Update Report was published (see [121](v) above). This report was focussed on leasehold homeowners, and considered “whether there have been breaches of consumer protection in the leasehold housing market” in relation to ground rents, sales practices and permission fees (executive summary, paras. 1 and 5).

The Law Commission Enfranchisement Report (No.392)

234. On 21 July 2020 the Law Commission published the Enfranchisement Report. The Enfranchisement Report was published alongside two other final Law Commission Reports, one dealing with the right to manage and the other with commonhold [1.4]. Chapter 1 explained how the three reports fit together so as to address (A) how home ownership currently works and its problems [1.14] – [1.43]; (B) the reforms proposed by the Commission and by Government [1.44] - [1.68]; and (C) how the reforms fit together [1.69] – [1.96].
235. Unsurprisingly, there is much continuity between the Enfranchisement Report and its predecessor publications. However, the report plainly takes a committed position on the inherent defects of leasehold as a model of property ownership. It reiterated the

problems of leasehold ownership at [1.15] – [1.18], including leasehold as a “wasting asset” and concerns over reduced control by tenants ([1.15]-[1.16]).

236. At [1.19] there is some additional and important analysis by the Commission of the problems under the heading “Leasehold as a valuable asset for landlords”:

“As we go on to explain below, these inherent features of leasehold ownership are the root cause of many criticisms that have been levelled at it as a mechanism to deliver home ownership. Conversely, these features of leasehold ownership are the very reason that it is an attractive investment opportunity, and a valuable asset, for landlords.

(1) Since a lease is a time-limited interest, there will come a point when the leaseholder needs to extend the lease or buy the freehold in order to retain the property. The leaseholder has to pay the landlord in order to do so. In addition, throughout the term of the lease, the leaseholder will usually have to pay ground rent to the landlord, which provides a source of income for landlords.

(2) The landlord’s control over the property provides a further source of income. For example:

(a) landlords can charge leaseholders a fee for certain actions, such as giving consent to alterations to a flat, or for registering a change of ownership when a leaseholder sells his or her flat; and

(b) landlords can receive income indirectly through the service charge that leaseholders are required to pay for the costs of maintaining their block or estate. For example, the premium for insuring a block will be paid by the leaseholders, but when arranging the insurance policy the landlord might receive a commission from the insurance company. Similarly, the landlord might arrange for the services at a block (such as for management, for cleaning, or for repair work) to be undertaken by an associated company.”

237. At [1.25] the Commission posed the question “What is wrong with leasehold ownership?” and referred to “a growing political consensus that leasehold tenure is not a satisfactory way of owning residential property”. At [1.50] the Commission made this significant statement:

“Our Terms of Reference are not neutral. They require us to make recommendations that would alter the law in favour of leaseholders. They indicate a policy conclusion reached by Government that the leasehold system in its current form is not a satisfactory way of owning homes.”

238. That hardening of view also appeared in an article published by one of the Law Commissioners, Professor Hopkins, together with Jonathan Mellor, who was one of the relevant Law Commission team, entitled “‘A Change is Gonna Come’: Reforming Residential Leasehold and Commonhold” (2019) Conv 321, which is extensively cited in the Enfranchisement Report. The article observed of the Law Commission and the Government’s work on leasehold reform at p.330 that “lying at the heart of the work is an acknowledgement that leasehold ownership has failed to deliver the benefits associated with being an owner, and that the systemic problems with leasehold mean that the tenure is ill-equipped to do so” (quoted at [1.70]). The article also referred to “a growing political consensus that leasehold tenure is not a satisfactory way of owning residential property” and to “the power-imbalance experienced by leaseholders.”

239. The problem of systemic inequality between tenants and landlords as a class was reiterated ([1.27]), together with certain ways in which the current law was open to abuse. It was noted at [1.32] that “however fairly the system is operated, inherent limitations of leasehold remain” and at [1.33]:

“All of the criticisms summarised above derive, at least to some extent, from those inherent limitations – namely that the asset is time-limited, and that control is shared with the landlord.”

240. At [1.46] the Commission referred to the objective of re-invigorating commonhold so that leasehold is no longer needed and added:

“Our starting point in this [commonhold] project is that it is not necessary for leasehold to be used as the mechanism for delivering home ownership. Rather, commonhold can be used instead, and we would go as far as to say that it should be used in preference to leasehold, because it overcomes the inherent limitations of leasehold ownership set out above.”

However, the Report recognised that there are leaseholds which continue to exist and in relation to which specific reforms are necessary.

241. At [2.16] the Commission turned to address “problems with the current law”, beginning at [2.17]-[2.19] with the “inherent unfairness of leasehold tenure”. The Commission’s own analysis expressed the wasting asset problem in these terms at [2.18]:

“Leaseholders buy a time-limited interest, frequently at a value close to – or even equivalent to – the freehold value. As the term of a long lease diminishes, its saleability and its usefulness as mortgage security also diminishes, particularly once there are fewer than 80 years remaining on the lease. Leaseholders – or their successors in title – often find themselves compelled to make an enfranchisement claim either:

(1) because they wish to sell their home and a purchaser can only be found (or will only be able to obtain a mortgage) if the length of the lease is extended; or

(2) because they know that the cost of doing so in the future will likely be higher.”

The Commission adopted essentially the same reasoning at [12.31] as part of its justification for recommending the Costs Recovery Reform.

242. A number of the recommendations made in the Enfranchisement Report led to reforms in the LFRA 2024, including:

- i) a recommendation that the non-residential use limit for building to be eligible for collective enfranchisement be increased from 25% to 50%;
- ii) making leasebacks to landlords of flats not participating in collective enfranchisement mandatory so far as the landlord is concerned; and
- iii) requiring landlords to pay their own non-litigation costs.

243. Chapter 6 of the Enfranchisement Report, addressing the qualifying criteria for tenants to obtain enfranchisement rights, returned to the subject of a possible distinction between owner-occupiers and other types of tenants. This issue was discussed at [6.372]-[6.391]. At this point the Enfranchisement Report accepted that “it may be desirable to restrict the enfranchisement rights of commercial investors”, and that there was “arguably” less of an imperative to assist them, with enfranchisement being “primarily aimed at helping homeowners obtain security of tenure in (and control of) their homes” [6.387].

244. Then at [6.388] the Commission recommended against drawing such a distinction:

“However, in practice we do not think that implementing such a distinction – in respect of which leaseholders have rights and which do not – is workable or desirable. It would be difficult to distinguish accurately between commercial investors who should not benefit from enfranchisement rights, and those who should, and attempting to restrict the former may well disenfranchise the latter. Consultees raised problems with both of the options we suggested in the Consultation Paper, from the avoidance mechanisms which might arise through a reduced definition of a residential unit, to the difficulties a reintroduced residence test may cause for various types of leaseholders (for example, those required to hold their lease through a company).”

The Commission added that to make this distinction would also add undesirable complexity to the regime [6.389]. However, at [6.391] the Commission referred back to the discussion in the Valuation Report of the drawing of a distinction between owner-occupier and other tenants at the *valuation stage*, “depending on where Government wishes to draw the line.”

245. In respect of non-litigation costs, the Enfranchisement Report summarised the problems the Law Commission had identified with the existing law as regards costs recovery included the difficulty for a tenant to predict, at the start of an enfranchisement claim,

the amount of costs they are likely to have to pay, the expense of challenging any costs claimed, and the consequent incentive on tenants to accept less advantageous terms rather than risk a higher costs bill ([12.7]-[12.11]). The Law Commission's key recommendation 10 was:

“We recommend that the answer to the question of whether leaseholders should continue to be required to contribute to their landlords' non-litigation costs should depend on which option is adopted for the valuation of the premium payable. If Government adopts a broadly market-value based approach, then we recommend that leaseholders should (in most cases) no longer be required to contribute to their landlord's non-litigation costs. However, if Government adopts a valuation methodology that is not broadly market-value based, we recommend that leaseholders should continue to be required to contribute to their landlord's non-litigation costs, but that the amount paid should be set by a fixed costs regime. These recommendations will make the exercise of enfranchisement rights more cost-effective for leaseholders”

246. This was on the basis that, if a market-value based methodology were to be adopted, tenants should not generally be required to make any costs contribution on successful completion of the claim because a price agreed on an open market sale reflects the fact that the parties are expected to pay their own costs ([12.29] and [12.56]).
247. The Enfranchisement Report makes much reference to “homes” and “home ownership” (in particular in Chapter 1). However, the use of “home-linked” vocabulary did not indicate that the Law Commission had now moved to framing the object of the suggested reforms as being (and only being) to improve the position of owner-occupiers. Nor does the use of the word “home” imply the exclusion of non-owner-occupiers. Thus at [1.70(1)] the report refers to “Leaseholders of existing homes”, stating “it is estimated that there are at least 4.3 million leasehold homes in England and Wales” (a figure which includes the 1.8m leasehold properties owned by private landlords as well as the 2.2m owner-occupiers). In other words, “homes” simply refers to “dwellings” in the absence of any other language to indicate that owner-occupation is the intended meaning. In many contexts, the use of the phrase “home owners” appears to emphasise ownership, not whether the owner has made the property their sole (or main) residence (e.g. [2.3]).
248. At [1.51] the Report stated:

“Our Terms of Reference refer generally to providing ‘a better deal for leaseholders as consumers’. Our recommendations for reform are therefore intended to make the law work better for all leaseholders.”

Bearing in mind that this was a final report following extensive consultation, which expressed firm criticisms of the inherent features of leasehold ownership, the placing of these two aims alongside each other, linked by the word “therefore”, is telling. The recommendations about reform were aimed at improving the position of all

leaseholders, not just resident occupiers, and the word “consumer” was used in the same sense.

The Government moves towards legislation

249. On 23 October 2020, officials advised the Minister as to the “importance of establishing the overarching aim for policies on enfranchisement valuation, and the relevance of that aim to defending a potential legal challenge from freeholders”, and recommended agreeing to:

“The overarching aim, which is consistent with previous Government messaging on the purpose of reforming enfranchisement and states that whilst freeholder interests are taken into account, the Government is addressing historic imbalance to ensure fairness for leaseholders.”

This aim was reiterated at para.10 and was said to be consistent with statements made by Government since 2017. It included the reduction of the price payable by a leaseholder to buy a freehold or extend his lease (para.12) and “ensuring that a leaseholder can own and use their property without fearing that it will become unsellable without payment of a large premium” (para.13). The submission noted that the Law Commission’s valuation report “contains options that can be put together in different ways to form a package”. The briefing made it plain that a fair balance had to be struck between the interests of landlords and tenants for the purposes of A1P1 (para. 7) and that Ministers had a spectrum of options for striking that balance between landlords and tenants differently (para.14). The recommended aim reduced premiums where possible while resulting in a premium for landlords representing a market value (para.14). Ministers approved the recommendation.

250. Also on 23 October 2020, officials provided a further submission to Ministers “to consider options for reforming valuation methodology”:
- i) This document is to be read in the light of the other submission of the same date and the overarching aims already identified by Government;
 - ii) The submission stated, “As set out in the accompanying submission on the aims of the valuation package, we are taking forward a comprehensive programme of reform to end unfair practices in the leasehold housing market.” It was noted that the decision on which option to choose was “likely to be determined in part by your views on the overall purpose of reforms”;
 - iii) The recommendation was to “simplify and speed up the enfranchisement process, make it more cost effective and reduce the price payable by leaseholders” by adopting the Law Commission’s Scheme 1 (removing marriage and hope value), capping ground rents at 0.1% and certain other recommendations;
 - iv) Scheme 1 was recommended: it “brings about the most benefits for leaseholders and results in a valuation that can be considered to reflect market value, because it is the value that the freeholder would receive if the lease ran its course” (Annex 2);

- v) The 0.1% Ground Rent Cap was recommended “to assist existing leaseholders” against a background of a legislative plan to ensure future leases were at peppercorn rents, on the basis “this would not affect most valuations but would significantly help those leaseholders with onerous ground rents”;
 - vi) Annex 2 recommended that the valuation should assume that the tenant is never in the market as this option “brings about the most benefits for leaseholders and results in a valuation which can be considered to reflect market value”. At the same time it provided for a landlord the market value he would receive if the lease, a time-limited asset, were to run its full course;
 - vii) Annex 4, which set out recommendations on ground rent, noted that landlords, valuers and some lawyers were opposed to the proposals, while leaseholders supported them. It stated that the proposal which had gained the most support was option 2 (capping ground rent at 0.1% of the freehold value) which would “offer significant support to leaseholders with onerous ground rents who currently find enfranchisement prohibitively expensive”;
 - viii) The submission recommended against “differential pricing” as a means of achieving a lower valuation for certain types of leaseholder. While recognising that “there are some benefits, particularly in helping ‘ordinary homeowners’ over investors”, in practice there were likely to be difficulties in differentiation, and “unintended consequences”. It is to be noted that this proposal was discussed in the context of a suggestion of enabling “lower valuations”;
 - ix) Annex 6 on differential pricing noted that “introducing a different approach for owner occupiers could only be justified if the overall policy intention is to benefit ordinary householders”, whereas the accompanying submission advised that a different, and broader, policy objective be adopted. Differential pricing would be difficult to implement and have unintended consequences. The submission, therefore, identified two different types of objection to this suggestion: that it would not be consistent with the recommended object of the legislation and it would be difficult to formulate and implement;
251. On 28 October 2020 the Secretary of State approved the Law Commission’s Scheme 1, and so the three reform measures came to be included in the Bill which resulted in the LFRA 2024.
252. While these materials would not have been available to Parliament when the LFRA 2024 was passed, they formed the basis of a press release published by the Government on 7 January 2021, announcing that it would be giving effect to reforms identified by the Law Commission in its Valuation Report, including “abolishing prohibitive costs such as ‘marriage value’” and setting rates used to calculate the enfranchisement premium “to ensure this is fairer, cheaper and more transparent”. The statement said that “millions of leaseholders” would be given the right to extend their leases by 990 years. The statement referred to “fundamentally making home ownership fairer and more secure” and quoted the Secretary of State, the Rt Hon Robert Jenrick MP, as saying “these reforms provide fairness for 4.5 million leaseholders and chart a course to a new system” (i.e. the entire pool of leasehold owners, including 1.8 million private landlords in the private rental sector). The statement included passages about leasehold generally (e.g. “under the current law, many people face high ground rents, which

combined with a mortgage, can make it feel like they are paying rent on a property they own”). It also referred to leaseholders’ “homes” (e.g. “those who dream of fully owning their own home”) without suggesting that the object of the reforms was limited to owner-occupiers. The Government also announced that it was “establishing a Commonhold Council - a partnership of leasehold groups, industry and Government - that will prepare homeowners and the market for the widespread take-up of commonhold.”

253. On 11 January 2021, the Secretary of State introduced the Government’s proposed reforms in a Written Statement. This referred to “reforms to how we hold property ... and the beginning of an even more fundamental change to English property law, through the widespread introduction of the Commonhold tenure.” The Secretary of State said:

“The Law Commission have now completed this work and their findings are clear. Under the current system, too many leaseholders find the process for extending their lease or buying their freehold prohibitively expensive, too complex and lacking transparency. I am addressing this, addressing historic imbalance to ensure fairness for leaseholders, whilst taking account of the legitimate rights of freeholders. I will continue to ensure we meet this objective as we bring forward reforms.”

The Government committed to a number of reforms, including the removal of marriage value, capping the treatment of ground rents at 0.1% of the freehold value and prescribing rates. The programme of reform was intended to “fundamentally enhance the fairness of English property rights.”

254. Work on the IA began in October 2021. In her witness statement at paras. 104 –122, Ms Crowther describes the lengthy and detailed work undertaken to collect and analyse data and to build and develop an evidence base and model for carrying out the IA and sensitivity analysis. The preparation and carrying out of the assessment was a long and iterative process.
255. In January 2022, the Government published a consultation paper “Reforming the Leasehold and Commonhold Systems in England and Wales” (“DLUHC Consultation January 2022”), which consulted on the Law Commission’s reports published in July 2020 concerning the non-residential limit for collective enfranchisement, right to manage claims and individual freehold acquisitions, the introduction of mandatory leasebacks, commonhold voting rights and the provision of information during the sale of a commonhold property. The Ministerial foreword referred to “homes” and “home ownership”, to the fact that “we do not have a leasehold system fit for the future, that works for leaseholders as well as freeholders”, and to “the historic imbalance” on which that system was built. Both themes are also evident in section 2 (“Introduction and background”). On the aims of the reform the statement said at [15] that:

“Government’s aims in this area are to address the historic imbalance as between the rights of freeholders and of leaseholders, ensuring fairness for leaseholders, whilst taking into account the legitimate rights of freeholders ... ”

256. The Law Commission’s recommendations and rationale in respect of non-litigation costs were put to the then Housing Minister in a ministerial submission dated 13 December 2022 (which would not have been before Parliament when the LFRA 2024 was enacted). The submission recommended making it “cheaper and easier for leaseholders to enfranchise” or to exercise “their RTM” (right to manage) by a general rule that leaseholders exercising those rights would not pay their landlord’s non-litigation costs, subject to the three exceptions which were included in the LFRA 2024. The basis for the recommendation was that (i) landlords were unfairly compensated in enfranchisement transactions when compared with “other” open market transactions (it being the Government’s position that the reformed enfranchisement process would be a form of “open market” transaction) and (ii) making tenants pay the landlords’ costs was a significant barrier to enfranchisement, with such costs being difficult to predict. The Annex contained a table of the Law Commission’s recommendations, the advice and the “rationale” for each recommendation. The rationale for the proposed reform to non-litigation costs was “the LC’s recommendation would meet our objectives for the leasehold reform regime by reducing the cost of enfranchisement for leaseholders and removing one of the barriers currently deterring leaseholders from bringing ENF claims.” The Minister agreed to the recommendation on 19 December 2022.
257. The Leasehold and Freehold Bill was announced in the King’s Speech on 7 November 2023, in which His Majesty confirmed that “My Ministers will bring forward a bill to reform the housing market by making it cheaper and easier for leaseholders to purchase their freehold and tackling the exploitation of millions of homeowners through punitive service charges.”
258. The notes published together with the speech explained further that “The Bill will make the long-term and necessary changes to improve home ownership for millions of leaseholders in England and Wales, by making it cheaper and easier for more leaseholders to extend their lease, buy their freehold, and take over management of their building”. Under the heading “What does the Bill do?” the notes stated “Empowering leaseholders: Making it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold - so that leaseholders pay less to gain security over the future of their home”.
259. On 10 October 2023, a pre-submission meeting took place with officials from the Regulatory Policy Committee (“RPC”). On 23 October 2023, Ministerial approval was given for the IA to be formally submitted to the RPC. Further approval was obtained a week later following a change to the headline figures in the previous version of the IA.

The Impact Assessment

260. The IA prepared by Government to accompany the LFR Bill was issued on 31 October 2023. We examine the contents of the IA further in our discussion of the effects of the LFRA 2024 at [279]-[300] below. For present purposes, we summarise what the IA states about the objects of the Bill:
- i) The opening paragraphs referred to tenants lacking control over their property and having limited security of tenure, and to the ability of landlords to make decisions and pass on the cost to tenants, with the risk of abuse, bad practice and lack of transparency. They also referred to the numerous barriers (including “prohibitive expense”) to taking over control under the current legislation;

- ii) The IA stated that “government intervention is needed to help rebalance in the market and empower leaseholders to take greater control of the homes they have paid for, whilst maintaining legitimate rights of freeholders”;
- iii) The policy objectives of the overall Bill were defined as follows:
 - “To deliver a fairer system, where leaseholders are empowered and have greater security and control over their property, with increased transparency over the costs they are charged and improved access to redress when things go wrong – and extending the benefits of freehold ownership to more homeowners. As a result of these reforms:
 - 1. More leaseholders will be able to exercise rights to buy their freeholds or extend their lease and it will be easier and cheaper to do so;
 - 2. More leaseholders will also be able to take control of their buildings through exercising the right to manage;
 - 3. Leaseholders will be protected from paying insurance commissions and will be provided with better information on the service charges they pay;
 - 4. Where leaseholders take a dispute to court or a property tribunal, the award of legal costs will be fairer;
 - 5. Access to redress schemes will be extended to all leaseholders and to freehold homeowners on managed estates;
 - 6. Freeholder homeowners on privately managed estates will gain new rights to challenge costs and the management of their estates; and
 - 7. Prospective homebuyers will also get access to quicker information at a fixed cost to better inform them of the key information relating to their potential purchase.”
- iv) The IA stated that the reforms “will re-balance power for leaseholders through amendments to leasehold law, providing them with greater control, security and transparency”;
- v) In chapter 1, addressing “the rationale for intervention”, reference was made to the different types of leaseholder ([1]), and the issues of control and transparency which leaseholders (in context, of all types) faced. At [5], the IA stated that “Government intervention is needed to help rebalance power towards leaseholders, changing this market to better empower leaseholders to have greater control and say over the management and associated costs of the homes they have paid for, whilst maintaining the legitimate rights of freeholders (landlords)”;

- vi) Paragraph [6] referred to economic market failures in the leasehold sector, including an “inherent power imbalance” between tenants and landlords, asymmetry of information, high barriers to entry and exit, and a separation of control from liability for costs;
- vii) Paragraph [7] identified other reasons to justify intervention in the leasehold market, including equity/fairness, simplifying an overly complex process and remedying the marriage value problem;
- viii) The “key challenges” section referred to the “current leasehold system” as being “in need of comprehensive reform”, “outdated and unfair, leaving the balance of power tilted too far in favour of landlords” ([23]), and to leasehold as a “time-limited asset, the value of which deteriorates over time” ([24]);
- ix) At [75], the policy objectives were summarised as being “to make the leasehold market fairer and more transparent, where leaseholders have greater security and are empowered to take control over their property and its management, with improved access to redress where things go wrong.” In the same vein Annex 2 states at [140] that “the package of reforms in respect of the valuation of premiums goes some way to addressing substantial imbalances in the market that lead to leaseholders being forced to pay high prices and fees to save their asset from depreciation and reducing the associated costs in this process”;
- x) The IA breaks down the total number of leaseholders between owner-occupiers and private landlords on at least two occasions ([16] and [139]). At no stage was any attempt made to quantify benefits solely for the former category, nor, when considering alternatives to the legislation under review, was there any separate consideration of the position of owner-occupiers. Had the object of the bill been solely to benefit owner-occupiers, with benefits to private landlords being an unintended by-product of that object (given the difficulties of framing the legislation more narrowly), the IA would have been expected to address that;
- xi) Indeed, Annex 2 stated at [39]-[41]:

“39. In the case of tenanted property, the transfer of marriage value is a transfer between one landlord and another. It is acknowledged that the removal of the requirement to pay marriage value will therefore benefit landlords of tenanted property as well as owner-occupiers. This is an effect of the policy objective to simplify the process, meaning that all leaseholders benefit from the reforms regardless of any other status they may hold.

40. To exempt landlords from the marriage value transfer would complexify the law, when our policy objective is to simplify it. The original 1967 Act did indeed only confer enfranchisement rights to resident leaseholders, but the 2002 Act later repealed the residency test. The reforms do not include differential pricing between owner-occupiers and landlords, on the grounds firstly of complexity and secondly of unintended consequences. For example, freeholders may be

incentivised to sell to landlord-leaseholders rather than owner-occupiers, being able to receive higher premiums from them, and “accidental” landlords, such as those who’ve inherited property or who have had to move out of their primary residence, but do not own another, would find themselves paying the differentially higher price.

41. Exempting landlords might also impose costs on the tenant, say, where a lease is running down to 80 years, and the landlord can’t afford to pay the marriage value, and so has to sell the property to prevent the diminution of his interest, and evict the tenant. Alternatively, if the landlord proved unable to prevent the lease from falling to 80 years or below, since his interest would be diminishing, so might his commitment to maintaining the property in good standard. Furthermore, the existence in the market of properties liable for marriage value reduces market liquidity, since they are difficult or impossible to mortgage.”

261. On 6 November 2023, officials advised Ministers on the arguments for and against exemptions in the draft legislation for certain types of landlord including charities. The discussion was not limited to the measures under challenge in these proceedings. The advice recommended that the Minister note the arguments for and against differential treatment of certain classes of “benign” landlords, but should not alter the Government’s approach. A suggested response to criticisms based on the absence of a residence requirement included the complexity this would involve and the fact that it would “take existing rights away from leaseholders when we are trying to increase the number of leaseholders who have access to those rights.” A suggested response to complaints about the impact on PCL freeholds was that “the stated policy objective is to address the historic imbalance between the rights of freeholds and leaseholders by making the enfranchisement process easier and quicker”. In relation to a landlord charity’s use of proceeds from its property portfolio for publicly beneficial purposes, the suggested response was that “the purpose or purposes for which that money will be used should not have any bearing on whether enfranchisement rights are available to the leaseholder”. This advice would not have been available to Parliament. In his readout dated 4 January 2024, the Secretary of State said that “thought had clearly been given to dissecting these arguments”. He did not propose any change of direction as a result of the arguments which had been made.
262. The RPC provided their final opinion on the IA on 24 November 2023. The RPC’s summarised the aim of the Leasehold Reform Bill as being “to address the power imbalance in the market and empower leaseholders to take greater control over their property or building, whilst maintaining the legitimate rights of freeholders.” One of the issues which the RPC assessed was whether the IA established a satisfactory rationale for intervention, and whether that rationale was supported by evidence. The answer in both cases was “yes”, by reference to the “issues with the current legislation causing a power imbalance between leaseholders and freeholders, resulting in leaseholders having limited control over their property and bearing disproportionate costs”.

263. The RPC gave the IA a green “Fit for purpose” rating, although commented that there were some areas for improvement, including further justification and evidence to support assumptions. Some minor textual changes were made following the RPC’s green rating.

The Bill

264. The Bill was introduced in the House of Commons on 27 November 2023. The Bill’s Explanatory Notes referred in its “overview section” to making “long-term changes to home ownership for millions of leaseholders”.
265. Also on 27 November 2023, the Government published a response to consultation on “Reforming the leasehold and commonhold systems in England and Wales” (the “Commonhold Response”). This contained references to broadening “access to the right to manage and enfranchisement so more leaseholders can manage and own their homes” and delivering “a better deal for leaseholders as consumers while taking into account the legitimate rights of freeholders.” However, the Government’s objective was also defined in wider terms: “the Government’s programme aims primarily to improve the leasehold system for leaseholders” and that the object was “improving access to enfranchisement” and promoting “transparency and fairness in the residential leasehold sector.” The only discussion of a distinction between different types of leaseholder came in question 5, on the issue of possible exemptions from the non-residential limit for collective enfranchisement, which states “we agree with the Law Commission that these rights should be available to all residential leaseholders and that drawing a distinction between commercial investors and residential leaseholder would be neither workable nor desirable” ([2.39]). Reference was made to difficulties of definition, additional complexity and the impact on other leaseholders in the collective enfranchisement context, including the risk of disenfranchising leaseholders.
266. The IA was published on 11 December 2023, at the time of the Second Reading in the House of Commons. The Parties have identified key figures, statistics and estimates in the IA in Agreed Statement F – ‘Key Statistics on Effects of the Legislation’.
267. The Bill published in December 2023 also contained a statement under s.19(1)(a) of the HRA Act 1998 that the provisions of the Bill were compatible with the ECHR.
268. In January 2024, in response to a Government consultation on restricting ground rent for existing leases (the “CMA 2024 Response”), the CMA highlighted a number of concerns with ground rent practices at that time, including ground rents which increased in line with RPI and/or doubled periodically ([32]-[36]). The CMA was not persuaded that the extent of an obligation to pay ground rent was reflected in the price for the property and saw no persuasive evidence that the leaseholder received anything in return ([42]-[43]).
269. The Committee stage in the House of Commons took place across ten sittings over five days in January 2024.

The ECHR Memorandum

270. The ECHR Memorandum on the Bill, as amended at the House of Commons Committee stage, was published on 16 February 2024 (“the ECHR Memorandum”).

This addressed the leasehold residential sector as a whole. It referred to the limited control of many leaseholders, their exposure to “the risk of abuse and bad practice”, “lack of transparency”, escalating ground rents and unfair lease terms, and barriers to enfranchisement ([2]-[4]). The ECHR Memorandum contained the now-familiar statement at [6]:

“Government intervention is needed to help rebalance power in the market and empower leaseholds to take greater control of the homes they have paid for, whilst maintaining the legitimate rights of landlords/freeholders.”

At [18], the document referred to “the Government’s aim of improving access to enfranchisement for all leaseholders and simplifying the enfranchisement process.”

271. At [10], the ECHR Memorandum explained that, in the Government’s view, the measures in the Bill were compliant with the ECHR and, in particular, A1P1. Mandatory leasebacks furthered the Government’s policy aims of “making collective enfranchisement more accessible and affordable for leaseholders” [33] and the right to a 990-year lease pursued “a legitimate policy aim of addressing the historic imbalance between freeholders/landlords” [35]. The ECHR Memorandum explained that “all premium valuation and calculation reforms will engage A1P1 as they are measures determining the level of compensation that a freeholder/landlord will be paid for the loss or change of their proprietary rights.” “They are nevertheless compliant as they balance fairness to leaseholders against the legitimate rights of landlords/freeholders, and pursue legitimate aims” [38]. As to the individual measures in issue here:
- i) The abolition of marriage and hope value was said to be A1P1-compatible because the price payable is still “reasonably related” to the value of the property, with the reduced premiums “justified and proportionate in light of the legitimate aims of reducing the premium payable by leaseholders to enfranchise, addressing historic imbalance between leaseholders and freeholders, and simplifying the enfranchisement process”[40];
 - ii) The Ground Rent Cap engaged A1P1 but was proportionate and justified because it “will increase access to enfranchisement, make leasehold properties easier to sell (or to obtain a mortgage over), and remove the current inequality between leaseholders with high or escalating ground rents and those without” [45];
 - iii) Removing the tenant’s obligation to pay the landlord’s non-litigation costs of enfranchisement engaged A1P1 but any interference has the legitimate aims of “addressing historic imbalance between freeholders and leaseholders, ensuring fairness for leaseholders and making the enfranchisement process less complex and expensive. The measures are rationally connected to those aims” [66].
272. On 27 February 2024, the Bill went through the Report stage, followed by Third Reading in the House of Commons.
273. The Bill was then considered by the House of Lords. The First and Second Readings in the House of Lords took place on 28 February 2024 and 27 March 2024 respectively. The committee stage in the House of Lords followed over four days between 22 April

2024 and 1 May 2024. During the debate on 24 April 2024, the Bishop of Manchester introduced an amendment to exempt charities from the removal of marriage value (Amendment 28), which was ultimately withdrawn. During the debate on 24 May 2024, Lord Howard introduced amendments providing for “grandfathering” in relation to marriage value (Amendments 21 and 22), which were ultimately withdrawn or not moved. The Lords Committee stage completed on 1 May 2024.

274. On 22 May 2024, it was announced that a general election would be held on 4 July 2024. This triggered a short “wash up” period of two days before the prorogation of Parliament on 24 May 2024. The Bill completed its final stages (the Report stage and Third Reading in the House of Lords and Commons’ consideration of the Lords’ amendments) on 24 May 2024 and received Royal Assent on the same day.

Engagement by the claimants in the reform process

275. It is clear that there was extensive engagement by the claimant groups with the Law Commission, Government and others from the outset of the consideration of reforms to leasehold enfranchisement (see e.g. the witness statement of Ms Crowther paras. 88-91). We give a summary here with references to some of the detailed evidence on the subject:
- i) The ARC claimants responded to the Government’s consultation, both in writing, in a number of meetings and in correspondence from their legal representatives;
 - ii) C&G engaged with the Law Commission and the Government, both individually and as part of industry bodies, and through their lawyers. Reports from a valuer, Mr Roberts, and an economist, Mr Hunt, were provided to the Secretary of State by C&G during consultation on the Bill. Mr Roberts independently provided a response to the Law Commission on behalf of his firm Cluttons. In his first witness statement Mr Seaborn describes the extensive steps taken by Cadogan to engage with the Law Commission, the Government and others between 2018 and 2024 (paras. 21 - 55). Ms Paul in a witness statement on behalf of Grosvenor sets out steps taken to make representations on the reforms, including (see paras. 60-64) the lobbying of MPs and members of the House of Lords and the provision of draft amendments when the Bill was under consideration;
 - iii) The Wallace claimants engaged with the Law Commission consultation process. This included attending various working group meetings, and holding meetings and corresponding with Ministers and Government more generally. Wallace gave evidence to the House of Commons Public Bill Committee on the Bill;
 - iv) Long Harbour and HomeGround, who provided statements in support of the claimants’ applications, made a joint submission to the Law Commission, a submission to the Public Bill Committee and also corresponded and met with Government officials. In his first witness statement at paras. 111 to 158 Mr Spearman describes the lengthy and detailed process of engagement undertaken for Abacus between 2017 and 2024;

- v) John Lyon’s Charity engaged in both the Law Commission and Government consultation processes;
- vi) The Portal Trust engaged in the Law Commission consultation process and in correspondence with the Secretary of State.

After the LFRA 2024 was enacted

- 276. On 3 March 2025, the Government published a White Paper on taking steps to bring leasehold to an end and to reinvigorate commonhold.
- 277. The current Government’s aims in implementing the LFRA 2024 were set out in a submission dated 1 April 2025 and approved by the Minister of State for Housing and Planning (see *Shvidler* at [134](6) above). The submission stated that:

“The Leasehold and Freehold Reform Act 2024 is a landmark piece of legislation that addresses issues that have caused widespread concern about the plight of leaseholders, as evidenced by Government consultations, and numerous reports such as those from the Housing, Communities and Local Government Select Committee, the Law Commission and the CMA. These concerns are shared by all the major political parties, which led to the cross-party support the legislation received during its passage through Parliament.”

Paragraph 7 set out the Government’s aims in relation to the LFRA 2024:

“While ensuring sufficient compensation is paid by enfranchising leaseholders to landlords to reflect their legitimate property interests, the Government’s aims and objectives in implementing the enfranchisement reforms contained in the Leasehold and Freehold Reform Act 2024 are:

- a. To put an end to the leasehold system of home ownership and support the transition to freehold ownership of flats and houses and ultimately commonhold ownership of flats, by ensuring the cost of enfranchisement is fair and reasonable.
 - b. To rebalance power in the enfranchisement market, making enfranchisement easier for leaseholders and preventing them from being required to overpay in order to obtain security of tenure or ultimate ownership of properties and removing elements of the costs that the Government believes are unfair.
 - c. To protect enfranchising leaseholders from the consequences of high and escalating ground rents”
- 278. Only limited parts of the LFRA 2024 have been brought into force which are unrelated to the issues in this claim (see s.124 of the LFRA 2024). Some of the reforms, including

the setting of rates for the purposes of enfranchisement valuation and costs, will be contained in secondary legislation which has not yet been made.

8. Estimates of the impact of the measures

The material before the court

279. The evidence before the court as to the impact of the measures introduced by the LFRA 2024 came essentially from two sources:
- i) The exercise carried out in the IA and the Addendum IA.
 - ii) Evidence adduced on behalf of the claimant groups as to the impact the LFRA 2024 has already had and will have on them.
280. While neither side was able to agree with the other's estimates, they both recognised that the LFRA 2024 would have a very significant beneficial effect on tenants, achieved through a very significant adverse financial effect on landlords.
281. After these challenges had been issued, and when doing work to respond to FOIA requests from C&G, the Secretary of State identified a modelling error which had a significant impact on the IA modelling of the Ground Rent Cap. The Secretary of State published the Addendum IA, which addressed the consequences of that error, on 14 April 2025.
282. We were provided with the following table in Agreed Statement F which summarised the financial effects of the LFRA 2024 as had been set out in the IA and Addendum IA in 2019 prices and at 2025 Present Value (save for the Net Benefit which was given in 2019 prices and at 2020 Present Value):

	MEASURE/EFFECT	IA	ADDENDUM IA
1	Impact of 0.1% Ground Rent Cap	£588m	£1.151bn
2	Marriage Value Reform	£1.91bn	£1.86bn
3	Costs Recovery Reform	£599m	N/A
4	Estimated Annual Net Direct Cost to Business ("EANDCB") of the	£227m	£259m

	LFRA 2024 and secondary legislation		
5	EANDCB for the LFRA 2024 on its own	£159m	£191m
6	Transfer of wealth from landlords to enfranchising tenants	£3.2bn	£3.7bn
7	Asset value impacts of Marriage Value Reform	£7.1bn	£6.9bn
8	Estimated Net Benefit	£90.9m 2020 PV and £107.3m 2025 PV	£90.9m 2020 PV and £107.3m 2025 PV
9	Total costs	£3.5bn	£4.0bn

283. The parties agree that the majority of marriage value is realised on enfranchisements in London (the IA estimating 65%, and the Addendum IA 66%, and Mr Roberts, C&G's expert, estimating 69%). The parties did not regard these differences as significant for the purposes of the claims, and nor do we.

The challenge to the IA and Addendum IA

284. Some of the claimants' experts presented a detailed critique of the IA. In particular, criticisms were advanced in the expert reports of Mr Roberts and Mr Hunt. C&G have gone so far as to submit that their "expert evidence in this litigation has dismantled the quality, accuracy and adequacy of the IA, identified serious flaws in the ground rent calculation and proves that significant gaps in the analysis remain unrectified".

285. Before considering where that expert evidence leads, it is important to keep in mind the nature of the exercise which the court is required to undertake. On this issue, we adopt the analysis set out in *ALR* [110]-[117] and [224]-[225]. In summary:

- i) Projections of the impact of legislation will typically involve a number of variables whose values cannot be predicted with certainty, and that is the case here;
- ii) It is not enough for a claimant to point to different variables which could have been used. It suffices that the process adopted provides a rational basis for the conclusions drawn;

- iii) The fact that the estimates have been subject to an internal review process (in that case by the OBR) is a matter to which the court is entitled to attach particular importance when considering an attack on the methodology; and
 - iv) The Government has a broad methodological discretion in assessments such as these, particularly where there is no obviously reliable way to model particular impacts or factors.
286. The IA was reviewed pursuant to the “Better Regulation Framework” (“the BRF”), under which the RPC, as a body independent of Government, seeks to ensure that legislative reforms have a clear evidence base. The BRF involves assessing:
- i) The Net Present Social Value (“NPSV”) of the legislation – the net impact to society and the economy as a whole, including businesses;
 - ii) The Net Present Value to Business (“NPVB”), the net direct and reasonable indirect benefits of a policy specifically to business; and
 - iii) The Equivalent Annual Net Direct Cost to Business (“the EANDCB”) of all policy options considered, on an annual basis.
287. The RPC assesses the quality of evidence and analysis used to inform the Government’s regulatory proposals, including the IA, for the purpose of giving Ministers and Parliament confidence that the evidence and analysis is fit for purpose. In this case, drafts of the IA were circulated internally over a three month period, culminating in a presentation by a team of policy and analyst officials to the RPC. The RPC found the IA “fit for purpose”, while identifying areas for improvement. It concluded that the DLUHC had provided “sufficient evidence to support the estimation of the EANDCB for those measures introduced by the Bill.” The RPC also said that the IA made “good use of data and evidence available from a range of sources, including surveys, administrative data and consultations”. We do not accept the claimants’ suggestion that the RPC was only concerned with the EANDCB, the RPC also being concerned with the NPSV, and the IA’s sourcing and use of data more generally. As with the OBR’s approval in *ALR*, we attach particular importance to that approval when considering the claimants’ criticisms of the IA.
288. In summary, Mr Roberts and Mr Hunt advanced the following principal criticisms of the IA:
- i) It is said that the IA was not comprehensive. That criticism must be true, in varying degrees, of almost any attempt to model the impact of significant legislation. The comprehensiveness of any model will reflect real world data availability and modelling resource constraints, as well as the law of diminishing returns, and involves an exercise of judgment. Modelling outputs were subject to a quality assurance process involving relevant publications, other economists in the DLUHC and a testing process with policy experts and analysts within the Department and an external adviser. We conclude that the drawing of the line in this case did not fall outside the Government’s methodological discretion;

- ii) Mr Roberts suggested that the modelled impact in the IA of removing marriage value from the enfranchisement premium significantly understates the actual position, for which Mr Roberts produces his own calculation of at least £4.22bn as against the IA's £1.9bn. The first set of criticisms concerns the use of data from a period when it is suggested that the number of enfranchisements was historically low (both because of the effect of anticipated legislation and the Covid 19 pandemic). The effect of these criticisms concerns the total number of leasehold enfranchisements which should have been assumed, rather than the impact of the reforms at the level of individual leases. To that extent, the effect of the Marriage Value Reform, as assessed by C&G's experts, involves a greater number of individual leases to the benefit of a greater number of individual tenants than the IA assumed. We do not believe that this assists the claimants – if anything it would strengthen the case for reform.
- iii) There are also criticisms as to the assumptions made as to unexpired lease length and the point in the life of a lease when enfranchisement will take place (whether before or only at the 80-year point when marriage value becomes payable under the existing legislation), which would concern the number of lease enfranchisements where marriage value would cease to be payable (and therefore would affect the position at individual lease level in some cases). The making of assumptions of this kind is essentially judgmental and we are not persuaded that the data used here was unreasonable or fell outside the appropriate margin of appreciation. To the extent that it is said to have led to an under-estimate of the total of marriage value impacted by the LFRA 2024 in the material placed before Parliament (the thrust of Mr Maurici KC's submissions on behalf of C&G), the IA included a sensitivity analysis with a higher annual number of transactions and a £2.5bn impact, and gave an estimate of £7.1bn for the increase in leasehold value which would follow from the removal of marriage value, which clearly signalled the potential for a greater impact on landlords than the modelled amounts. We are satisfied that the judgments made in the IA in this respect fell within the Government's methodological discretion, and that the presentation to Parliament has not been materially undermined;
- iv) Mr Roberts criticises the use in the IA of a 10-year appraisal period when the measures to be introduced by the LFRA 2024 would have a longer term impact. The evidence establishes that this issue was the subject of specific consideration. Such a 10-year period is standard for impact assessments. The appraisal period was discussed with the external advisor and the RPC, and the view taken that an annual impact over 10-years should be provided, but in addition the potential asset value impact in the IA necessarily reflected possible enfranchisements of leases of 80 years or shorter, whenever enfranchisement took place, and was not, therefore, limited to effects within a 10-year period;
- v) Mr Hunt criticises the quality of data relied upon. We have referred already to the RPC's consideration of this issue. On the data provided by the Land Registry of the number of lease extensions per year, high and low estimates were provided in addition to the central case, to allow a sensitivity analysis to be performed. Modelling assumptions were made on the impact of the 0.1% Ground Rent Cap, in line with evidence obtained from the CMA, in the absence of a data set providing a full distribution of house prices and ground rents. Once

again, a sensitivity analysis was undertaken. We are satisfied that in both cases these judgments fell within the Government's methodological discretion; and

- vi) In his second report, served on 3 June 2025 and admitted *de bene esse* at the hearing, Mr Hunt made various additional criticisms about the raw data used in the modelling analysis, and also said that if the model used in the IA was updated to reflect data available at May 2025, without changing other inputs, the modelled NPV would move from positive £90.9m to negative £75m. As to the first of these points, the data set was sourced from the Land Registry and included high and low estimates. It reflected both statutory and non-statutory lease extensions. The evidence indicates that the data set used was preferred over another data set (referred to as the "sample data set") because the Land Registry advised that this alternative set had a significant potential for sample bias. With respect, this very granular criticism, raised at a late stage, was wholly unrealistic in the context of a judicial review challenge, given the Secretary of State's broad methodological discretion. The second point was equally unpersuasive: the "updating" data was not available when the IA was prepared and the LFRA 2024 enacted, nor can we see a principled basis for selective updating.
289. At the hearing, the criticisms of the IA were more narrowly focussed, at least for the purposes of oral submissions. We have dealt with the issues as to the data set above. The other two points concerned the two errors admitted by the Secretary of State.
290. The first concerned the error which the Secretary of State's team identified and drew to the claimants' attention, which led to the Addendum IA. This had two elements. The first concerned the uprating of ground rents to simulate increases over time. This had used RPI forecasts from the OBR but did not fully align with OBR assumptions, and in any event a typographical error was made in reproducing the relevant formula. The second concerned discounting of ground rents in the Term valuation, and the removal of an inflation deflator which was appropriate for Government calculations more generally, but was not appropriate for the IA, given the stated desire to simulate standard market practice valuation in which no such deflator is used. We would note that neither error is suggestive of some systemic deficiency in the IA. As to the effects:
- i) These increased the estimate of total costs and total benefits by £500m (from previous figures of £3.5bn and £3.6bn) at 2025 PV. There was, however, no change in the NPSV or NPV measures in the IA of £90.9m (2019 prices, 2020 PV), because costs and benefits netted off for that purpose. As well as a central case, the IA gave a range for total costs and benefits, expressed in 2020 PV;
 - ii) So far as the costs figures are concerned, the figures in the IA ranged from £2.292bn to £3.899bn, with a central case of £2.984bn. The revised central case was £3.4bn, and the range £2.691bn to £4.319bn;
 - iii) So far as the benefits figures are concerned, the figures in the IA were £2.405bn to £3.803bn, with a best estimate of £3.075bn, revised to £2.803bn to £4.223bn, with a best estimate of £3.51bn;

- iv) Finally, the EANDCB in the IA was £340.7m costs, £118m benefits producing net £222.8m cost. This was revised to £391.2m costs, £136.6m benefits and a net cost of £254.6m.
291. Second, a methodological error was identified by Mr Hunt very shortly before the hearing which impacted one aspect of both the IA and the Addendum IA, namely the calculation of NPV. In short, the calculations of the effects of the Marriage Value Reform, Ground Rent Cap and Costs Recovery Reform in the LFRA 2024 related to amounts which would reduce the sums payable by tenants to their landlords to enfranchise. An over-estimate would over-state the overall level of that reduction, an under-estimate would have the converse effect. That made it inappropriate, when calculating “high” and “low” estimates, to subtract the low estimate of value obtained by tenants from the high estimate of value lost by landlords. The effect of the error was presented by C&G’s expert, Mr Hunt, for all three measures as set out in a letter from C&G’s Solicitors dated 11 July 2025 and which we reproduce below (the Secretary of State’s team did not have sufficient time to produce a revised range, but the direction of travel is not disputed):

Scenario	IA NPV	Addendum IA NPV	Corrected NPV
Low	-£1,493.7m	-£1,515.9m	+£62m
High	+£1,510.3m	+£1,532.4m	+£139m
Best estimate	+£90.9m	£90.9m	+£90m

292. Mr Maurici made two points about these admitted errors.
293. The first was the very significant adjustment which resulted from the correction made in the Addendum IA of the ground rent error. As to this argument, the revised figure still appeared within the range of *costs* figures in the IA, from which the considerable uncertainties attaching to what was, on any view, a very large figure for the costs impacts on landlords would have been obvious. While the upper end of the range of total costs increased from £3,899.1m to £4,319.6m, the considerable uncertainty attaching to both figures was made clear, together with the scale of potential cost impacts. That is also clear from the figures presented in the IA as to the effect of the removal of marriage value on the valuation of leasehold properties, of £7.1bn in England and £7.2bn in England and Wales (figures which are very similar to the £7.281bn calculated by C&G’s experts) which reflected the benefit to tenants of no longer having to pay marriage value to landlords and, as we have noted, was not limited to a 10-year time horizon. Mr Hunt also suggested that, once allowance is made for the second error, the £513m error corrected in the Addendum IA lies considerably outside “the margin of sensitivity for the NPV” (i.e. the range of *overall* economic impacts of the LFRA 2024 in NPV term). This narrowed considerably following the correction of the second error. However, we accept the evidence of Ms Fleming and Ms Crowther for the Secretary of State that the range of costs figures is more relevant in this context.

This is because the modelling of ground rent, in which the error corrected in the Addendum IA features, was the modelling of costs. As the costs involved an adverse change in the position of landlords and a corresponding improvement in the position of tenants, they net off in the NPV calculation.

294. The second was the effect of the second of these errors on the range of NPV benefit figures. On Mr Hunt's calculations, this involved a change from an original range of minus £1.493bn to plus £1.51bn to a range of either plus £62m to plus £139m or plus £113m to minus £96m depending on which of two possible methodologies is used. The experts agreed that neither the central NPV estimate nor the total estimate of costs and benefits was affected by this error. Mr Maurici suggested that the revised figures suggested a much lower potential upside for NPV, as well as much lower potential downside, than the IA, albeit an essentially unchanged NPV. We do not accept that this has any significant impact on the weight to be attached to the IA: if anything, the reliability of the central case as to NPV would be reinforced by the significant narrowing of the range. As we have said, there is a dispute as to whether the effect of this second error might be to move the effect of the first error identified in the previous paragraph outside the range of NPV estimates provided. Whether or not that is so, we do not accept that it materially undermines the IA, which clearly presented very significant adverse potential effects on landlords, which might well have been far in excess of the upper end of the 10-year costs range, given the valuation impact on leasehold properties set out in the IA.
295. It follows that we do not accept any of the claimants' criticisms of the IA. It was a bona fide and methodologically rational exercise for estimating the effects of the LFRA 2024 and the sensitivities of the measures assist the claimants.
296. Finally, Mr Roberts refers in his report to "local variation in overseas ownership" with higher levels in PCL. Mr Hunt criticises the IA for failing to "distinguish between costs and benefits that accrue to UK residents or businesses versus foreign ones", referring to para. 2.3 of HM Treasury's Green Book which states that "social or public value ... includes all significant costs and benefits that affect the welfare and wellbeing of the population". He argues that the Government should seek to assess the welfare benefits for the population served by the Government, and that the benefit to overseas residents should have been excluded. These passages formed the basis for a submission by Mr Maurici that the IA was flawed and/or could not be relied upon because it had failed to calculate how much of the benefit would be to tenants residing outside the UK.
297. We believe Mr Hunt was intending to refer to para. 2.1 of the Green Book (May 2022). This, in relevant respect, provides:

"Principles of appraisal

Appraisal is the process of assessing the costs, benefits and risks of alternative ways to meet government objectives. It helps decision makers to understand the potential effects, trade-offs and overall impact of options by providing an objective evidence base for decision making.

Appraisal: The appraisal of social value, also known as public value, is based on the principles and ideas of welfare economics

and concerns overall social welfare efficiency, not simply economic market efficiency. Social or public value therefore includes all significant costs and benefits that affect the welfare and wellbeing of the population, not just market effects. For example, environmental, cultural, health, social care, justice and security effects are included. This welfare and wellbeing consideration applies to the entire population that is served by the government, not simply Taxpayers ... ”

298. We are not able to derive from para. 2.1 a requirement to separate out benefit (or for that matter cost) as between UK and non-UK residents, although we accept this may well be a relevant consideration. The IA was alive to this issue, but dealt with it briefly at [140]:

“The Government is aware that some leaseholder landlords are overseas investors, but would note that some freeholders are overseas investors too.”

299. The Law Commission in the course of the consultation process heard different views on this issue. The Law Commission’s Valuation Report, [3.76] referred to a suggestion that making enfranchisement cheaper would “result in a one-off transfer of equity” which, in PCL, “may” cause “a resulting leakage of wealth out of the UK” (a submission from Cluttons, Mr Roberts’ firm). The immediately following para. ([3.77]) records a submission that “there are ... a number of foreign controlled funds who have invested on the basis of stable law and stable institutions in this country, and it is likely to be the case that any shift in value from landlords to lessees is likely to damage this country’s international reputation as a safe haven for investors”. The Law Commission did not recommend drawing such a distinction by reference to residence or, indeed, tax domicile. This was something which had not hitherto featured in the statutory enfranchisement regime and would have taken enfranchisement rights away from some leaseholders, including foreign resident leaseholders whose property was used for residential purposes only, and not rented out. This was a point made in a submission to the Housing Minister of 6 November 2023 (page 4).
300. In circumstances in which the claimants have made much of those who they say are the ultimate economic or practical beneficiaries of their freehold property portfolios, we can see formidable difficulties in attempting to produce the type of calculation now said to be vital to the IA. The claimants themselves have only offered qualitative rather than quantitative assessments (and only of the tenant and not the landlord side). We would take some persuading that the failure to embark on that difficult process, in circumstances where the LFRA 2024 itself was not seeking to single out “foreign” tenants, rendered the IA inappropriate for its task. We have not been so persuaded.
301. Finally, we briefly summarise the evidence from the various claimant groups as to the impact of the LFRA 2024 on them individually, which was not seriously challenged in its broad effect and which, we accept, is significant on any view.
302. So far as the ARC claimants are concerned:
- i) The FIAF claimant group has received valuation advice that the measures challenged adversely affect the capital value of the fund by a sum in the range

between £91 and £152 million. Market uncertainty following the announcement in November 2023 of a consultation on a general ground rent cap and the publication of the bill that became the LFRA 2024 has, the FIAF claimant group believes, already caused the fund to lose 30% of its valuation, equating to a loss of over £50 million;

- ii) As of April 2025, PUKGLF's valuation has dropped by 52% for the residential component of the fund since the Government's announcement of proposals for leasehold reform in January 2021; this includes a drop of 35.3% in the total investment value of all residential ground leases in the period between the LFRA 2024 receiving Royal Assent (May 2024) and April 2025. As of April 2025, PUKResGLF's valuation has dropped by 44.8% since the Government's announcement of proposals for leasehold reform in January 2021. This includes a drop of 20.8% in the total investment value of all residential ground leases in the period between the LFRA 2024 receiving Royal Assent (May 2024) and April 2025. The PUKGLF and PUKResGLF claimant groups have received valuation advice that the measures challenged (the enfranchisement cap and the changes to cost recovery, the impact of the Marriage Value Reform being too uncertain to quantify in their case) will, depending on the rates ultimately set, adversely affect the value of the portfolios by a sum in the range between £100 and £154 million;
- iii) GRIF's portfolio was valued as £106.1 million as at 30 September 2023. By March 2025, the valuation of the fund was £56.8 million, representing a reduction in value on a like for like basis (net of disposals, completed enfranchisements or similar) of £40.3 million since September 2023. With caveats about material uncertainty in the market because of long-standing speculation about the measures challenged in these proceedings, and the absence of prescribed capitalisation and deferment rates, the GRIF claimant group has been advised that the enfranchisement cap challenged will, using a capitalisation rate of 8%, reduce the value of the fund by about £98 million.

303. Turning to the C&G claimants:

- i) The evidence of Grosvenor is that the removal of marriage value would result in losses estimated at £168 million (at present day value). The 0.1% Ground Rent Cap will cause Grosvenor a reduction in capital value of approximately £9.07 million.
- ii) The evidence of Cadogan is that the removal of marriage value would result in losses estimated at £73 million (at present day value). The 0.1% Ground Rent Cap will cause Cadogan a reduction in capital value of approximately £4.75 million.

304. As to the Abacus claimants, the impact of the measures under challenge on their portfolio value has been estimated as a loss of about £147 million, caused primarily by the fact that the measures will reduce the premiums payable by (and costs recoverable from) all tenants on enfranchisements.

305. As to the Wallace claimants:

- i) The removal of marriage value is estimated to cause a reduction in Wallace’s projected cash flows over the next 40 years of £92 million.
 - ii) The Ground Rent Cap at 0.1% for the purposes of calculating enfranchisement premiums is estimated to cause a reduction in Wallace’s projected cash flows over the next 40 years of £70 million.
306. John Lyon’s Charity estimates its annual loss from the removal of marriage value at about £1.37million.
307. The Portal Trust estimates that the amount payable on the enfranchisement of qualifying properties under its two leases with SHA would be reduced by between 43-47% as a result of the LFRA 2024, with loss of marriage value for the whole estate estimated at £52m at March 2021 values.

9. The aims of the measures

The rival cases as to the objects of the LFRA 2024

308. Ms Wakefield (who advanced this aspect of the argument on behalf of all of the claimants) submitted that the object of the LFRA 2024 was “making it cheaper and easier for those who live in the relevant flat or house (i.e. owner-occupiers) to enfranchise”. Ms Wakefield accepted that reducing the cost of enfranchising, and simplifying the process, were distinct objects of the legislation, but in each case she contended that this was only for the benefit of owner-occupiers. Ms Wakefield submitted that the wider effect of the LFRA 2024 did not reflect a wider object, but what she referred to as “mechanistic” issues: difficulties of differentiation between different types of tenant and the risk of unintended consequences in doing so if the scope of the legislation had been confined in its operation to the owner-occupiers which it was aimed at.
309. Sir James Eadie submitted that the LFRA 2024 has several legitimate aims, with an overriding theme. The legislation sought to “address the unfairness of the leasehold system”, which arose from the tenant’s wasting asset and lack of security and control, and to enable tenants to deal with those inherently unfair features of leasehold as a form of property interest by making enfranchisement cheaper and easier. Both of these aims reflect an overall intention:
- “to address these issues and reform leasehold enfranchisement in order to rebalance power in the market and empower leaseholders, whilst maintaining the legitimate right of freeholders.”
310. It will be apparent that while the claimants suggested that the objective of the LFRA 2024 was to improve the position of a particular type of tenant, the Secretary of State suggested that its purpose was to address the inherent unfairness in leasehold property ownership generally.

The legislation

311. There is nothing in the LFRA 2024 itself which suggests its object is solely to benefit owner-occupier tenants, rather than tenants more generally. The long title contains no reference to owner-occupiers nor, to pick up language which features prominently in the claimants' submissions on this part of their case, "homes", "homeowners" or "consumers". Rather it provides:

"An Act to prohibit the grant or assignment of certain new long residential leases of houses, to amend the rights of tenants under long residential leases to acquire the freeholds of their houses, to extend the leases of their houses or flats, and to collectively enfranchise or manage the buildings containing their flats, to give such tenants the right to reduce the rent payable under their leases to a peppercorn, to regulate the relationship between residential landlords and tenants, to regulate residential estate management, to regulate rentcharges and to amend the Building Safety Act 2022 in connection with the remediation of building defects and the insolvency of persons who have repairing obligations relating to certain kinds of buildings."

312. It is also accepted that those provisions of the LFRA 2024 which are in dispute are not restricted in their application to owner-occupiers.

313. In terms of those aspects of the legislation which were said by the claimants to support their case as to its object:

- i) Reference was made to the inclusion within the category of permitted leases (i.e. those exempt from the general prohibition on the granting of long leasehold interests in houses) of "shared ownership" leases (sched.1 para.7), a shared ownership lease being a lease in which, in effect, a tenant buys a share of a property and pays rent on the remaining share. While it may well be the case that in practice, "the overwhelming majority" of shared ownership tenants are owner-occupiers (as the claimants submit), it does not follow from the exemption of this category of lease (among others) from a completely separate aspect of the LFRA 2024 that the object of all of the legislation, including the three measures subject to challenge here, is limited to benefiting owner-occupier tenants;
- ii) Reliance was placed on s.49, which increases the limit of internal floor space used for non-residential purposes before a building ceases to be susceptible to right to manage claims from 25% to 50%. However, this section is concerned with the purpose of parts of the floor space within a building (residential or non-residential). Accommodation owned by tenants acting as private landlords and sub-let for others to live in is still "residential accommodation" for this purpose. Section 49 draws no distinction between floor space used for residential purposes by the long leasehold tenant themselves (i.e. "owner-occupiers"), or for such purposes by someone sub-letting from such a tenant.
- iii) Sections 53-58 addressing service charges deal with a matter of obvious relevance to all types of tenant (e.g. buy-to-let tenants will pay the same charge

as owner-occupiers and have the same lack of control over the service charges incurred). The suggestion that these provisions can be seen as aimed at benefiting one set of tenants rather than others receiving the same demands is untenable;

- iv) The same applies to insurance costs covered by ss.59 and 60 (a single insurance cost for the building being charged in relevant shares to all tenants with long leases in the building, whether or not they are occupiers);
- v) Similarly, redress schemes allowing for the independent investigation of complaints made by tenants against the landlord or an estate manager is a matter of obvious benefit to all classes of tenants, and is not suggestive of a distinction between them as regards the objects of the LFRA 2024, or more particularly the three measures under challenge.

314. In short, there is nothing in the LFRA 2024 itself which supports the suggestion that the object of the Act is concerned only with one particular category of tenants, namely owner-occupiers, and a number of the provisions relied upon by the claimants in support of that narrower object if anything support the contrary proposition. We accept, however, that the language of the LFRA 2024 is not determinative.

Hansard

315. When it became apparent that the claimants (in particular) wished to place passages from Hansard before the court in support of their arguments, permission was given to the Speaker of the House of Commons to intervene in the case. Constructive engagement between the Speaker’s legal team and the parties led to a significant narrowing of the issues as to what material the court could properly look at, and for what purpose. For those few passages which remained in issue, we had submissions from Ms Hannett KC and Ms Sheridan on the Speaker’s behalf, to which we have paid “careful regard” (*R v Chaytor* [2011] 1 AC 684, [16]).

316. Having reviewed that material, we do not consider that this is one of those cases where resort to Hansard is necessary to identify the objects of the LFRA 2024 for ECHR purposes, or that the Hansard references add materially to the information available from other sources as to the object of the LFRA 2024. We derived some limited assistance from the statement by the Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Michael Gove MP, when introducing the Bill to the House of Commons for its second reading on 11 December 2023 (Vol 742 col 655-656). He identified the purpose of the legislation as being to “liberate leaseholders from many of the unfair practises to which they are still subject”, stated leasehold “is essentially a deal where someone invited to buy a home and then, instead of becoming a full homeowner, they are treated, or can be treated as a tenant”, and described leasehold as “a fundamentally unfair system and a fundamentally inequitable tenure.”

317. The claimants relied upon a number of other statements, including those of Ms Rachel MacClean MP, who until November 2023 had been Minister of State at the relevant Department with responsibility for the Bill, but who was not in Government in December 2023. She stated at col.674 that the Bill would “restore true home ownership to millions, end rip-off charges and introduce fairness to the leasehold market”. Elsewhere she referred to “nearly 5 million homes” (i.e. a reference to the 4.98m

leasehold properties in England, of which 57% were owned by owner-occupiers). This passage did not assist us in identifying the object of the LFRA 2024. Nor was there any passage which assisted in the speech of Mr Lee Rowley MP, Minister for Housing, Planning and Building Safety, in closing the debate.

The statutory interventions prior to the LFRA 2024

318. The claimants also relied upon the conclusions which it was said could be drawn from the prior history of leasehold enfranchisement legislation, which it is said was initially intended to address a particularly disadvantaged category of owner-occupier tenants and, to the extent it was expanded beyond that initial category, was done on the basis that a fuller measure of compensation was to be given.
319. We conclude that the history of the legislative reforms between 1967 and 2008 does not support the claimants’ arguments as to the objects of the LFRA 2024. This is for three reasons.
320. First, that prior history does not, on closer analysis, support Ms Wakefield’s overall theme. Whilst the original LRA 1967 regime (at least from the 1969 reform) involved a more favourable measure of compensation for a particular class of owner-occupiers identified by reference to the rateable value of the house, no similar benefit was conferred for owner-occupiers of flats under the LRHUDA 1993. The value thresholds were significantly attenuated for leasehold houses and removed for leasehold flats by the HA 1996. The residence requirements were removed by the CLRA 2002, with both owner-occupier and other tenants outside the original LRA 1967 paying the same measure of compensation. The 2008 Act removed the “low rent “ test for leases granted on or after 7 September 2008. The measure of compensation to be paid was not linked to any intention that the legislation was to benefit owner-occupiers solely. Plainly it was not.
321. Second, the continuity approach does not assist the claimants. The true objective which runs through the history of enfranchisement legislation from the LRA 1967 and *James* onwards, is to address the inherent unfairness and imbalance in the landlord and tenant relationship which arises from the wasting asset problem. That has been tackled by Parliament in a number of different ways, but the simple point is that in 2024 the legislature decided that previous interventions had not gone far enough to achieve that objective, for all tenants and not just owner-occupiers.
322. Third, it is necessary to the claimants’ argument to assume continuity with previous legislation at a much more granular level, relating to the specific means, by which and subject to which, that object has been pursued over time. But in any event, the Law Commission stressed the width of their review of the law of leasehold enfranchisement in the Consultation Paper ([1.7]), and the ToR were expressed in terms unlimited by any alleged settled features of previous enfranchisement legislation. The Ministerial statement of 11 January 2021 announcing the Government’s decision to seek the enactment of the Law Commission’s valuation recommendations said the reforms would “fundamentally enhance the fairness of English property rights” and marked “the beginning of an even more fundamental change to English property law.”

The material from 2016 to the enactment of the LFRA 2024

323. A considerable part of Ms Wakefield’s submissions involved references to the materials produced in the period between the Law Commission’s identification of leasehold reform as a project in 2017 through to the Bill receiving the Royal Assent. We have sought to summarise that material above, and to highlight those parts which both sides place reliance upon, or which bear more generally on the objects of the LFRA 2024. It will be apparent from that summary, that while we accept that there have been some references which support Ms Wakefield’s submissions, read as a whole the material does not support the distinction between owner-occupiers and other tenants which the claimants seek to draw. That is not expressed in the LFRA 2024 itself, nor is there anything like adequate material to support the proposition that the aim of the legislation was much more limited than its obviously broad effect. Rather we accept that, particularly as the Law Commission’s exercise drew to a close and the process moved to the formulation and passage of legislation, the material shows that the reforms, in particular the measures under challenge, were intended to benefit leaseholders generally.
324. Rather than repeat our rehearsal of that material, we will pull out some of the key points which we believe emerge from that material, when the documents are read fairly and as a whole.
325. First, there is a clear and consistent theme within the materials of an inherent unfairness in long leaseholds of dwellings as a form of property ownership with several elements: the “wasting” nature of the tenant’s asset requiring the tenant to embark on and pay for enfranchisement in order to reverse the decline in value (at a potentially increasing cost); the associated point of the tenant having already made a substantial payment for the property; and the separation of aspects of control of the asset from the principal stakeholder and costs payer. After being (relatively) neutral on those issues in the Consultation Paper and Valuation Report, the Law Commission moved more explicitly to the “inherently unfair” view in the Enfranchisement Report. The Government took the same approach.
326. Second, we accept that there are many references to “homes” and “home owners”, in the documents, often in prefaces or summaries. Whilst there are undoubtedly occasions when Government and the Law Commission used that language to indicate owner-occupiers, that is not surprising given some of the acute, socio-political problems being addressed, such as non-mortgageability. On the other hand, there are many uses which are far more open-textured. It is perfectly normal to use the word “home” to embrace a dwelling or residential accommodation (rather than, for example, business premises) whether house or flat. Phrases such as “second home” and “holiday home” reflect that elasticity of use. In addition, someone who bought a home, and became a home owner, might legitimately regard one of the bundle of rights they had thereby acquired as being the ability to benefit from that asset by letting it to someone else when it suited them to do so. For that reason, we are not persuaded that the use of the word “home” or derivatives of that word, without more, supports the view that the objects of the measures were focused upon or limited to owner-occupiers.
327. Third, we do not accept that the expression “leaseholder as consumer” necessarily excludes tenants using their property as an income-generating asset. Such tenants are capable of being treated as consumers. It depends on the context, including the legal

measure in question. We accept that in some contexts the expression “leaseholder as consumer” could be taken to refer to a tenant who uses leasehold premises for domestic rather than for business purposes. For example, the Law Commission expressly stated that they were using “leaseholder as consumer” in parts of their Consultation Paper and Valuation Report to refer to “individual owners” (another term which itself is not limited to owner-occupiers). But, as we have seen, its approach had changed by the time of its Enfranchisement Report. The Commission had arrived at firm conclusions about the inherent unfairness of long leaseholds of dwellings because of the wasting asset problem. It treated the expression “leaseholders as consumers” as referring to all leaseholders and “homes” similarly (see [247]-[248] above). There are also a number of references to “all leaseholders”, or which use statistics consistent with that being the object in mind.

328. Further there are contexts – in particular liability to pay service charges and insurance premiums, issues about a lack of transparency as to how service charges are calculated, tenants as the victims of unfairness in ground rents, and uncertainty as to the identity of the landlord from time-to-time – in which the concerns expressed are obviously applicable to all tenants, however they use their property. The references to “leaseholders as consumers” in this context are consistent with the aim of tackling such issues for the benefit of all leaseholders and from 2020 onwards it is plain that that phrase is being used in the same way when tackling the inherent unfairness in the relationship between landlords and long leaseholders of dwellings.
329. Fourth, the Law Commission did discuss the possible exclusion of non-owner occupiers from rights of enfranchisement, or as a class of leaseholders who could be required to pay more than owner-occupier leaseholders to enfranchise. They expressed reservations about doing so on “mechanistic” grounds, to use Ms Wakefield’s phrase, albeit not exclusively so. As we have noted, however, this was a very nuanced discussion: nuanced, because it was linked to the extent of any reform which the Government and, ultimately, Parliament might chose to make (i.e. how far the premium would depart from full market value) and nuanced because it was recognised that desirability of such a course would depend on what object the Government or Parliament was seeking to achieve through the reforming legislation.
330. Fifth, from October 2020 onwards, when the Government began the move from consultation and reports to legislation, a greater emphasis was placed on what was said to be the unfair imbalance between the tenant and the landlord inherent in the leasehold model of property ownership:
- i) The 23 October 2020 Ministerial submission – on which both sides relied – recommended legislating with the objective of addressing that historic imbalance to ensure fairness for tenants generally. Annex 6 made it plain that differential pricing would not be consistent with the broad objectives of the reforms to benefit all tenants (see [250(viii)] above). Following that submission, the option of differential pricing was not pursued;
 - ii) The objective thus adopted is apparent in the 7 January 2021 press release and the 11 January 2021 Ministerial statement. It is also apparent in the ministerial submission to the Housing Minister dated 13 December 2022 accepted on 19 December 2022;

- iii) The IA reflected these aims (correcting the unfair imbalance in the landlord and tenant relationship and the economic market failures in the leasehold sector, allowing leaseholders to take control of their property), and sought to model the effects of the legislation on all leaseholders. If, as the claimants submit, the legislation was passed on a basis which delivered significant financial benefits to 4.98m leaseholders solely for the purpose of benefiting 2.86m of them (using the figures in the IA at [16]) it is remarkable, to say the least, for this singular feature not to be discussed either in the IA, or within the Government. In fact, the discussion in Annex 2 of the IA at [39]-[41] makes it clear beyond doubt that the measures were aimed at reducing unfairness for all leaseholders;
 - iv) The ECHR Memorandum referred to the wider aim of rebalancing the interests of landlords and tenants and “improving access to enfranchisement for all leaseholders and simplifying the enfranchisement process”.
331. The claimants argued that the concept of an “imbalance” in the leasehold market “connotes a situation in which there is a perceived difference in the power held by the two-affected parties and thus naturally catches the position of owner-occupiers” (and implicitly, not private landlords or commercial investors). We do not accept this contention:
- i) The issues identified in the pre-LFRA 2024 materials – the wasting nature of the lease as an asset and consequential pressure on the tenant to enfranchise at significant cost; the lack of control of the property and the liability for costs incurred at the direction of others; the informational asymmetry – apply as much to the private landlord or commercial investor as the owner-occupier, because they are inherent in the leasehold model of property ownership;
 - ii) Like owner-occupiers, non-owner-occupier landlords who acquire leasehold interests in property do not, in the vast majority of cases, negotiate the terms of the lease. They become parties to a bargain the terms of which have previously been settled, and are dependent on an enfranchisement compensation regime fixed independently of the contract by which the leasehold is acquired;
 - iii) The claimants’ binary distinction between “owner-occupiers” and others does not reflect the many different kinds of tenant in both categories. As the Law Commission noted in the Consultation Paper at [1.63(2)], owner-occupiers range from “those with limited means through to very wealthy owners” and non-resident tenants embrace “buy-to-let landlords, those with a second home; those who have invested in property” and “some speculative investors and developers”.

Conclusions as to objects

332. On the basis of our review of the LFRA 2024, and the various other materials admissible for the purpose of identifying the legislation’s social object, we accept the Secretary of State’s case that the LFRA 2024 was intended to address what had been identified as an inherent unfairness and imbalance in the nature of leasehold property, arising from:
- i) The wasting nature of the tenant’s asset and lack of security;

- ii) The pressure on the tenant to pay significant enfranchisement compensation to the landlord in addition to the premium and property costs already paid in order to restore value and/or ensure marketability and mortgageability;
 - iii) The landlord's control over significant aspects of the tenant's property ownership, for which the tenant bore the financial consequences, with charges to the tenant which were in many cases unfair or opaque;
 - iv) While enfranchisement provided the tenant with a legal route to address many of those unfair aspects of leasehold, enfranchisement required tenants to make payments to the landlord at a level which were an obstacle to exercising the right to enfranchise and included elements which the Government had concluded were unjustified (marriage value and the obligation to pay the landlord's non-litigation costs) and others which were unfair or abusive (ground rent provisions at certain levels).
333. We accept that that broad objective included within it improving the position of owner-occupier tenants. They provided a particularly popular means of illustrating the unfairness which campaigners for leasehold reforms wished to see addressed, and a particularly compelling argument for reform. However, we conclude that the objects of the LFRA 2024 were not limited to benefiting this smaller category of tenants than the LFRA 2024 actually applied to.
334. We also accept that it was also an object of the LFRA 2024 to simplify and reduce the cost of the process of enfranchisement – not simply as a “second order” object as a means of giving effect to the broader objective, but as an objective in itself. The object of simplification provided a further reason for not drawing distinctions between different types of tenant if it was not necessary to do so.
335. We accept that both of these objects are legitimate objects for A1P1 purposes. We note that in *Wilson*, the House of Lords held at [68] that “the fairness of a system of law governing the contractual or property rights of private persons is a matter of public concern”, and that “legislative provisions intended to bring about such fairness are capable of being in the public interest, even if they involve the compulsory transfer of property”. In the same passage, the House of Lords referred to a public interest in protecting from exploitation those wishing to borrow money, who are “often vulnerable”. We similarly accept here that the fairness of a system of law governing the holding of residential property, and of correcting what has been identified as a serious imbalance in the position of two classes of property owner in relation to leasehold interests, is capable of being in the public interest. Further, having identified the objects of the LFRA 2024, the issue of whether they are legitimate objects for ECHR purposes is one on which the view of Parliament is entitled to deference, or a wide margin of appreciation, for the reasons set out at [140]-[160] above.
336. As Ms Wakefield accepted, Parliament is best placed to form a view about what is in the public interest, and the court will respect Parliament's judgment on the public interest unless it is “manifestly without reasonable foundation” or outside the wide margin of appreciation which must be accorded to that judgment.
337. We acknowledge that the object of “simplification” promotes a less weighty public interest, all other things being equal, than the broader objective we have identified, and

that to the extent it operates independently of that objective, it will have less justificatory power. As we have already acknowledged, the nature of the compensation received by the landlords for the rights they are required to transfer is of central importance in the proportionality analysis.

Are the measures rationally connected with the identified objects?

338. Each of the three measures which form the basis of the challenges in issue at this hearing:

- i) the Ground Rent Cap;
- ii) the Marriage Value Reform; and
- iii) the Costs Recovery Reform;

is rationally connected with what we have found to be the objectives of the LFRA 2024.

339. In particular:

- i) Capping ground rents at 0.1% for the purposes of the Term value will make enfranchisement cheaper for tenants, thereby contributing to the rebalancing of the relationship between tenants and landlords to address the wasting asset problem. The measure will provide some protection to tenants against high or escalating ground rent to the extent that they would inhibit enfranchisement;
- ii) Removing marriage value from the calculation of enfranchisement premiums will make enfranchisement cheaper for tenants, thereby contributing to the rebalancing of the relationship between tenants and landlords to address the wasting asset problem. The measure will also simplify the process of enfranchisement by avoiding the need for expert input on these issues;
- iii) Abolishing the tenant's obligation to pay the landlord's non-litigation costs of any enfranchisement premiums will make enfranchisement cheaper for tenants, thereby contributing to the rebalancing of the relationship between tenants and landlords to address the wasting asset problem. The measure will also simplify the process of enfranchisement by encouraging greater efficiency in the conduct of enfranchisement transactions and reduce the risk of tenants being inhibited from enfranchising because of uncertainty as to the amount of their liability for the landlord's costs.

340. The claimants' submissions on the absence of rational connection were premised on the contention that the legitimate object of the LFRA 2024 was limited to benefiting owner-occupiers. We have rejected that submission, but note that even if we had accepted it, the rational connection would have been satisfied, because the introduction of such a distinction would have reduced the coherence and increased the complexity of the enfranchisement scheme.

10. The Ground Rent Cap

341. The submissions on the Ground Rent Cap were led by Ms Carss-Frisk for the ARC claimants, and adopted by the other claimants. We begin by providing background and

context to the consideration of the Ground Rent Cap, before considering Ms Carss-Frisk's submissions at the third and fourth stages of the *Bank Mellat* proportionality analysis: less intrusive measures and fair balance.

The background

342. The nature of ground rent has been explained at [28] above: it is an amount, generally payable annually, by the tenant to the landlord as a term of the lease (generally in addition to the premium paid when the lease was originally granted), which may be fixed for the duration of the lease, or subject to some contractual indexation provision or a periodic review process. A great many ground rents do not take the form of valuable consideration at all, but are entirely notional, described as a "peppercorn rent". The fact that some tenants were required to pay a non-trivial financial sum, which might well increase over time, which other tenants were essentially required not to pay anything at all, naturally became contentious.
343. We have summarised some of the consideration of ground rents between 2017 and 2025 in section 7 of this judgment when explaining the genesis of the LFRA 2024. At this stage we refer to the following:
- i) The Law Commission's Valuation Report at page 19 of the summary and [6.146] referred to the difficulties of escaping an onerous or increasing ground rent by enfranchising because the amount of the ground rent would result in a higher premium (for an additional example of the latter see the summary to Valuation Report at page 19, [6.123] and [6.146]). At [6.131] the Law Commission noted that "it is not, however, within the scope of this project to reduce ground rents in leases outside the exercise of enfranchisement rights";
 - ii) The CMA Update Report discussed whether "onerousness" in the context of ground rents was a concept capable of shedding light on the question that it had to address from the perspective of consumer protection law. At [37], the CMA records that its discussions with stakeholders suggested that the two ways of thinking about onerousness in this context were: (a) whether the cost to the homeowner of the lease term exceeds the benefit received by the homeowner; and (b) whether the clause affects the marketability or saleability of property. The CMA thought that there was little value in trying to adopt a single definition, and in pursuing its investigation, it instead considered the definition of an unfair term under consumer law, i.e. "a term in a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer" ([39]-[40]);
 - iii) The CMA Update Report estimated that there are approximately 3.5m 'historic' leaseholds with nominal or low ground rents (e.g. up to £50) ([68]). This represents a very large proportion of the total number of leaseholds. Developers and investors informed the CMA that the vast majority of the 778,000 new-build leaseholds sold between 2000 and 2018 were "modern" leaseholds, with annual ground rents typically at several hundred pounds and usually increasing over the term of the lease ([69]). The CMA noted that "data from developers indicates that the most prevalent form of increase in ground rent is by RPI" ([73]);

- iv) The CMA expressed the view that “[t]he consequences of ground rent obligations can be severe for homeowners creating difficulty in selling or mortgaging their homes, but the justifications for it given to us seem at best limited”, especially in relation to ground rents which escalate (either by periodically doubling or by keeping pace with RPI) ([3], [4], [77]-[78] and [80(a)]). The CMA stated that there was no persuasive evidence that home prices have been significantly reduced when compared with equivalents with peppercorn ground rents and “it is unclear how deferring some of the consideration would make the property more affordable, since the homeowner should end up with essentially the same total annual expenditure on mortgage interest and ground rent regardless”. It recognised that “leasehold properties sell for less than freehold properties, and there is a body of academic research that supports this proposition” but that “on a number of estates we have seen evidence of houses that are essentially the same being sold for the same price whether leasehold or freehold”;
- v) It also stated at [78] that “there are the most controversial escalators: the clauses that double more frequently than every 20 years. Not only do these convert annual payments into large sums quite quickly – and significantly above current rates of inflation – they may well create problems in selling or mortgaging a property because lenders either have policies that prevent lending against such properties or, in the absence of a policy, are likely to exercise a discretion that may lead them not to lend”;
- vi) The CMA’s investigation into unfair leasehold terms leading to its Update Report only focused on ground rent terms that double more frequently than every 20 years because it stated that these terms posed the most significant problems for consumers. However, the CMA noted that this was not the limit of its concerns or the limit of the escalation problems tenants face (with, for example, RPI escalation a further concern): [80];
- vii) At [3], [66]-[71] and [76]-[80] the CMA referred to an absence of evidence that ground rents were commercially necessary.

344. A number of themes emerge from that material:

- i) A concern that some ground rents were, or through the operation of contract revision mechanisms would become, “onerous”;
- ii) The perception, in a number of quarters, that ground rents were paid without anything being provided in return, and that the liability to pay them was not appropriately reflected in the price of a property;
- iii) The influence which ground rents had on the tenant’s ability to enfranchise, in circumstances in which the Term value of the premium was calculated by reference to the ground rents payable over the remainder of the lease. This had two elements. First, the general goal of making enfranchisement cheaper as a response to the general concerns about the leasehold model of ownership (of which the removal of the onerous element of a ground rent formed part). Second, and more specifically, that enfranchisement provided a means of escaping an

adverse ground rent regime, although it was curtailed by the effect such ground rents had on the enfranchisement premium.

345. Addressing the first two concerns in new leases were objects of the Leasehold Reform (Ground Rent) Act 2022 which, save for a narrow category of excepted leases, required all ground rents on leases granted after the commencement date to be peppercorn ground rents. That meant the premium for the enfranchisements of such leases would not involve a Term element at all. Where an existing lease was subject to surrender and re-grant (which would be the effect of enfranchisement by lease extension), the 2022 Act provided that the peppercorn rent replaced the ground rent from the date when the existing lease would have come to an end (s.6(2) and (3)).

346. The then proposal to legislate in those terms was referred to in the Ministerial submission of 23 October 2020 as relevant background to the decision to introduce the Ground Rent Cap so far as the enfranchisement cost of existing leases was concerned. This was also a consideration which the Law Commission had identified at [6.152] of the Valuation Report, when stating:

“It may also be necessary to consider how a decision to cap ground rents for enfranchisement purposes would interact with Government’s intention to limit ground rents in future leases to a peppercorn (nil monetary value) – in particular, whether the proposed exceptions to the ground rent ban which Government has identified point to a need for any further exceptions to a cap on ground rents in enfranchisement valuations.”

347. The LFRA 2024 does not impose any constraint on a landlord’s contractual right to receive ground rents in excess of the Ground Rent Cap. The effect of s.37(1) and para. 26(4) of Schedule 4 of the LFRA 2024 is limited to the calculation of the Term element of the enfranchisement premium, in which the figure for ground rent to be used in that calculation is to be capped at 0.1% of the FVPV at the date the enfranchisement premium is calculated. Thus:

- i) To the extent that the FVPV of a property rises during the period between the coming into force of the LFRA 2024 and the date a tenant seeks to enfranchise, the cap will increase over that time.
- ii) Where, at the date the tenant seeks to enfranchise, the ground rent is already at or over 0.1% of the FVPV, the figure used in the calculation of the Term element of the premium will be capped at 0.1% (with no allowance for any mechanisms which would have increased the ground rent over the remainder of the lease, such as an indexation clause or review mechanism).
- iii) Where, at the date the tenant seeks to enfranchise, the ground rent is less than 0.1% of the FVPV, but over the remainder of the life of the lease, it would at some point have increased above the FVPV at the enfranchisement, the Term calculation will only reflect anticipated increases up to 0.1% of the FVPV current at the *valuation date for enfranchisement*. That is so even if, at the date that increase would have taken place (e.g. at a 20 year review), the increased ground rent would *not* have exceeded 0.1% of the FVPV *at that future review date*. This consequence of the reform was understood by the Law Commission,

because it is reflected in the worked examples at figures 22 and 23 of the Consultation Paper, the footnotes to which also acknowledged that a capped ground rent would lead to a higher capitalisation rate (a further factor leading to a lower Term value). It is also referred to at [6.126] of the Valuation Report.

348. These provisions of the LFRA 2024 are subject to certain exceptions where:

- i) No premium was payable on the original lease, so that the ground rent is the only consideration paid for the leasehold interest (para. 26(9)(a));
- ii) The current lease was granted on the basis that the premium was lower and the ground rent higher than would otherwise have been the case, with the premium being lower by an amount broadly equivalent to or greater than the capitalised value of the ground rent: i.e. the ground rent can properly be described as a deferral of part of the premium, rather than some additional amount: (para. 26(9)(b)).

349. So far as consideration in Parliament is concerned:

- i) We have summarised relevant principles at [128]-[139] above;
- ii) The claimants' Joint Article 9 Statement at row 3 refers to statements referring to the imposition of a cap and at the level of 0.1% of FVPV, which they seek to rely upon for the purpose of showing that there was no discussion of some alternative cap. The admission of that material is opposed by the Speaker by reference to *R (SC) v Secretary of State for Work and Pensions* [2022] AC 223, [182]:

“If it can be inferred that Parliament formed a judgment that the legislation was appropriate notwithstanding its potential impact upon interests protected by Convention rights, then that may be a relevant factor in the court's assessment, because of the respect which the court will accord to the view of the legislature. If, on the other hand, there is no indication that the issue was considered by Parliament, then that factor will be absent. That absence will not count against upholding the compatibility of the measure: the courts will simply have to consider the issue without that factor being present, but nevertheless paying appropriate respect to the will of Parliament as expressed in the legislation.”

- iii) In circumstances in which the real issue between the parties, as we explain below, is the level at which the Ground Rent Cap was set and whether it was too low rather than the fact of a cap at some level, we accept that the potentially “relevant factor” identified in *SC* is not present. Beyond noting that that factor is not in play, we derive no assistance from the Parliamentary materials;
- iv) To the extent that reliance is placed on the suggestion that there is no evidence of Parliamentary consideration of the effect of a 0.1% cap on landlords, we would note that a significant impact on some landlords was clear from the IA which was before Parliament (and that it was obvious that the benefit to some

tenants of the 0.1% cap necessarily came at the expense of the relevant landlords) – the IA estimating the reduction in amounts paid by tenants to landlords to enfranchise over the 10-year review period of £588m (2019 prices, 2025 PV). As noted at [282] above, that figure was revised to £1,151m in the Addendum IA. The IA also estimated that there were 900,000 leaseholds, in properties built since 2000, which were likely to contain some form of ground rent escalation provision (para.49);

- v) We note, however, that the issue of seeking voluntary reform to leasehold terms was mentioned in the course of the Parliamentary debates and rejected. The Secretary of State’s speech on the Second Reading stated that “some landowners and freeholders ... keep the ground rents at appropriately low level” but that “individual leaseholders should not simply have to rely on the good will and good character of whoever the freeholder is” (Vol 742, 11 December 2023 cols.655, 659).

350. Finally, Ms Carss-Frisk suggested that the 0.1% Ground Rent Cap involved a retrospective interference with accrued landlord rights, and for that reason required a particularly compelling justification in A1P1 terms. We have addressed the applicable law in this area, and the reasons why this appeal to “retrospectivity” does not assist the claimants in this context (see [152]-[160] above).

351. For the reasons set out above and in this part of the judgment, we remain of the view that a wide margin of appreciation is appropriate in the application of the A1P1 tests to the Ground Rent Cap.

Whether the objects which the Ground Rent Cap was intended to achieve could have been achieved by a less intrusive measure

352. We have summarised relevant legal principles at [168]-[170] above. As we noted, the central question is not whether less restrictive measures *could* have been adopted, or whether the state can prove that its legitimate aim would not be achieved without its selected measure; rather it is whether in adopting its measure and striking the balance it did, the legislature acted within the margin of appreciation allowed to it.

353. In the present context, the first “less intrusive” measure for which the claimants argued was that the Ground Rent Cap should have been limited to enfranchisement by certain classes of tenant: those in some form of financial hardship, owner-occupiers or some combination of the two.

354. As to that:

- i) We have already rejected the claimants’ contention that the object of the LFRA 2024 was limited to benefiting owner-occupiers, and concluded that it was intended to address what were identified as fundamental issues inherent in leasehold as a form of property ownership which were the source of an unfair balance in the tenant-landlord relationship.
- ii) If and in so far as the object of the Ground Rent Cap had been solely to address the position of those otherwise unable to avoid high and increasing ground rents by enfranchising, we accept that some form of financial test might have been a

less intrusive measure. However, even considering the purpose of the Ground Rent Cap in isolation, without regard to the wider objects of leasehold reform, and ignoring the difficulties referred to in the pre-legislative and legislative history of singling out particular types of tenant (i.e. difficulties arising from the blunt edges of any definition, additional complexity and the risk of unintended consequences), a measure of this type would not have addressed the unfairness of ground rents fixed at this level which was one of the objects of the reform. In particular, the level of ground rents payable by tenants to landlords materially impacted tenants' ability to avoid the essential unfairness in leasehold ownership by enfranchising, and the amount which a tenant was required to pay to reverse the deterioration of its wasting asset. Limiting the Ground Rent Cap to certain types of tenant would not have addressed the fundamental unfairness of leasehold as a form of property ownership so far as all tenants are concerned, which was a key object of the LFRA 2024;

- iii) The claimants' submission that "what is fair and reasonable between a residential leaseholder and a commercial landlord will not be the same as what is fair and reasonable between a commercial investor leaseholder and pension fund freeholder" belies the fact that each tenant is paying a charge of the same type and not getting anything significant in return, and that the terms on which ground rent is payable are generally fixed when a lease is first concluded or re-negotiated, not by those on both sides who subsequently invest in the leasehold or freehold. The Law Commission's option, carried into the LFRA 2024, did address genuine cases of negotiation where the onerous ground rent was a quid pro quo for a reduction in the premium paid for a lease, which was described in the Valuation Report at [6.146] as "a useful, targeted solution".

355. Second, there was some limited attempt to suggest that the issue of high ground rents could have been tackled voluntarily, with particular claimant groups referring to their own efforts. However, that suggestion was repeatedly considered in the course of the pre-legislative and legislative consideration and rejected. We have referred to Parliamentary consideration above and the issue is also addressed in the IA, [78]. The responses received to the various consultation processes undertaken by the Law Commission, Government, Parliament and the CMA revealed ongoing issues with the level of ground rents for many tenants. A summary of some of those responses is given in the witness statement by Ms Crowther. It is clear that, notwithstanding the voluntary actions taken by some landlords (some 60 of whom signed the Government's "public pledge" aimed at a sub-set of ground rent escalation provisions), levels of ground rent remained a real issue for a significant number of tenants.
356. The next, less intrusive, measure which it is suggested could have been adopted was a Ground Rent Cap higher than 0.1%.⁴ As noted at [168] above, the central question is not whether less restrictive measures *could* have been adopted, or whether the state can prove that its legitimate aim would not be achieved without its selected measure but whether in adopting its measure and striking the balance it did, the legislature acted within the margin of appreciation allowed to it. Adopting the language used in *James*, [51], the issue for this court is whether adopting a Ground Rent Cap of 0.1%, as opposed to, say, 0.25%, "could be regarded as reasonable and suited to achieving the legitimate

⁴ For example, in para. 6.3 of the first witness statement of Mr George Crowe for ARC and in para. 241(d) of the first witness statement of M Jack Spearman for Abacus a figure of 0.25% was suggested.

aim being pursued, having regard to the need to strike a 'fair balance'." That issue turns on the extent to which it was reasonable to conclude that a cap of 0.1% struck a fair balance between the interests of the tenant and landlord, which in turn raised the issue of the potential for ground rents in excess of 0.1% to adversely affect a tenant's ability to sell or mortgage their property. We address the material which formed the basis of a 0.1% cap in the "fair balance" section below. We are satisfied, on the basis of that material, that it was reasonable to conclude that a Ground Rent Cap set at 0.1% struck a fair balance between the interests of tenants and landlords, and that a cap at that level was reasonable and suited to the objects of addressing the inherent unfairness so far as tenants are concerned in the leasehold form of property ownership. In particular, it is reasonable to conclude that setting a cap of 0.1% reflected a level of ground rent which would avoid realistic adverse effects on the saleability and mortgageability of leasehold property, and was "fair" for that reason. By contrast, a higher cap would have inhibited the ability of tenants paying ground rents adversely affecting the saleability and mortgageability of their property to address the problem by enfranchising.

357. Finally, we should address a point made by Mr Maurici that the object of making enfranchisement cheaper and easier for tenants could have been achieved without affecting the amount payable to landlords if the tenants' enfranchisement costs had been subsidised from government funds. Mr Maurici cited the decision of the ECtHR in *Radovici v Romania*. However, this suggestion fails to grapple with what we have identified to be a key object of the LFRA 2024 – to address the inherent unfairness in leasehold as a property ownership model and the imbalance in the leasehold relationship between tenants and landlords. Using central funds to preserve the benefits of that unfairness so far as landlords are concerned would not remedy it. The financial effects of the LFRA 2024 in addressing this issue impact (and solely impact) landlords because it is landlords who benefit from the criticised aspects of the leasehold relationship. As with the Consumer Credit Act 1974 provisions in issue in *Wilson*, the impugned features of the LFRA 2024 exclusively operate as between parties to an existing legal relationship and relate to the financial aspects of that relationship. Further, as Lord Reed noted in *AXA* at [130] (see [170] above), "the fact that a publicly-funded scheme would avoid any burden being placed on [landlords]" does not "entail that a scheme which imposes such a burden is disproportionate".
358. In summary, we conclude that in choosing to address its legitimate objects through the Ground Rent Cap Parliament did not exceed its margin of appreciation.

The "fair balance" assessment

359. The financial impact of a Ground Rent Cap on landlords is obvious: it deprives landlords who, at the date of enfranchisement, were already receiving or would in due course receive ground rents above 0.1% of the FVPV from the benefits of that "excess" when calculating the "Term" element of the enfranchisement premium. While the question of whether the cap is exceeded and if so, the extent of any excess, may depend in some cases on when an enfranchisement claim is served, we accept that, in aggregate terms, this will have a significant impact on landlords. The precise distribution of that impact will depend on how many enfranchisement notices a particular landlord receives, and the level of current and future ground rents of the subject properties. The significant aggregate financial impact was clear from the IA and even more so from the Addendum IA, and that 10-year assessment period used in those assessments would obviously not capture effects outside that period.

360. However, in assessing the significance of that impact, the following matters are relevant:
- i) The Ground Rent Cap is expressed as a percentage of the market value of the subject-property at the valuation date. It is, therefore, directly linked to the FVPV of the property for which the ground rent is paid (i.e. a market value), and will accordingly be higher for higher FVPVs, and reflect rises in the FVPV up to the date of valuation. The form of the cap, therefore, is tailored in its impact to this extent;
 - ii) The pre-legislative process provided a basis for disputing whether the payment of ground rents at a level higher than peppercorn rents was justified in commercial terms, and, specifically, whether landlords provided any services of sufficient value in return.
361. The impact of the Ground Rent Cap on tenants was to reduce the cost of enfranchising for those tenants who were subject to ground rents which did, or would in due course, exceed the level of the cap and, specifically, the ability of tenants paying “high” or “increasing” ground rents to avoid that liability by enfranchising.
362. Ultimately, the fair balancing of those interests is affected by the level at which the cap is set. For that reason, the claimants mounted a lengthy attack on the 0.1% figure, suggesting it had no or no sufficient evidential basis, and failed fairly to balance the landlords’ and tenants’ interests for that reason.
363. A 0.1% figure features prominently in the pre-legislative material which we now summarise.
364. In *Millard Investments Limited v The Earl of Cadogan and Cadogan Estates Ltd* LON/LVT/1756/04, a decision of a Leasehold Valuation Tribunal (“LVT”) on 15 December 2004, the issue arose of “what would be an acceptable level of ground rent” for the property in question. Reference was made to another LVT decision in *Leslie v The Cadogan Estate* (2000). The *Millard* LVT accepted expert evidence to the effect that a palatable ground rent should be no more than 0.1% “on the specific facts of this case”, while stressing that “this percentage is not intended to be taken as a guide in future cases”. This decision, and its influence on other tribunal decisions and market perceptions, was referred to by the Law Commission in its various papers.
365. A 2009 RICS paper, “Leasehold Reform Graphs of Relativity”, described an “onerous” ground rent as one that had the effect of depressing the leasehold value of the property and thus its relativity as against the freehold value. It expressed the view that “the level of rent which has no effect on value [that is, the leasehold value] is generally accepted to be in the range of 0.05% to 0.25% of the freehold vacant possession value”. Clearly the 0.1% figure falls within that range.
366. The Upper Tribunal (Lands Chamber) in *Roberts v Fernandez* [2015] UKUT 0106 (LC) also considered when a ground rent was onerous. In that case, ground rent within the RICS range (0.21%) was not treated as onerous, it being said that “certain LVT” decisions suggesting 0.21% was onerous were “inconsistent” with the RICS paper and did not constitute evidence.

367. On 11 May 2017, the Nationwide Building Society adopted new lending criteria, and would not lend on newbuild properties where the ground rent exceeded 0.1% of the FVPV.
368. Nationwide's lending criteria were referred to on a number of occasions by the Law Commission, not always consistently. The Consultation Paper referred at [16.56] to "the Nationwide Building Society's new lending policy" of 0.1% (without specific reference to new buildings). The Valuation Report at [3.52], when stating that valuers had conventionally viewed a ground rent of above 0.1% as onerous, stated "the Nationwide Building Society's lending policy is not to lend on properties with a ground rent over 0.1%" (again without reference to new buildings). However, at [6.122], the 0.1% was stated to be applied by Nationwide to "new properties". The Enfranchisement Report at [3.93] was essentially in the same terms as, and cross-referred back to, the Consultation Paper.
369. The 2017 UPP at [4.18] referred to Nationwide changing its lending criteria for new build properties, as did the summary of consultation responses of December 2017 at [19]. Significantly, that paragraph also stated:

"Some pointed out that Nationwide's decision to change its lending criteria for new build leasehold properties (referred to in para. 50) had been misinterpreted by conveyancing solicitors as applying to existing leases, resulting in some leaseholders being forced onto less favourable mortgage terms".

At [56], when considering the position of consultees who opposed limiting ground rents to a peppercorn, the most common suggestion of what a reasonable ground rent should be was 0.1% of the property's value.

370. The Law Commission noted at [1.32] of its Consultation Paper that in March 2018, the Welsh Government had announced a new requirement for its "Help-To-Buy" scheme that "ground rents would need to be limited to a maximum of 0.1% of the property's sale value".
371. At [3.52] of the Valuation Report, the Law Commission stated that:

"There is no set definition of an onerous ground rent, though it seems to have become generally accepted in the market (reflecting a view that has conventionally been held by valuers for many years) that a ground rent above 0.1% of the property's freehold value is onerous".

At [6.122], the Law Commission stated that "we understand that it is now widely accepted that a ground rent above 0.1% of the property's freehold value is 'onerous'".

372. In a letter of 10 April 2025, sent in response to an enquiry by one of the firms of solicitors acting for the claimants as to the basis for these paragraphs, the Law Commission stated:

"Our references to a 0.1% threshold, and a cap set at that level, drew on a range of factors, including lenders' policies, Tribunal

decisions, general understanding and conventions among experts in the sector, a Select Committee report, and the consultation responses we received. We expressed our own conclusion on them, and set out an option for reform for Government to consider. In the footnote to paragraph 3.52, as you note, we refer expressly to some of these sources from which that view stems, including *Millard Investments Ltd v Cadogan* (LON/LVT/1756/04) and The Nationwide Building Society's lending policy for new-build properties. We also referred to another case, *Roberts v Fernandez* (LRA/14/2014), in which a ground rent of 0.21% was suggested to be onerous. We also refer in that footnote to the Housing, Communities and Local Government Committee's Report, "Leasehold Reform" (Twelfth Report of Session 2017-19). At paragraph 91 of that Report, the Committee wrote that in its view (having heard evidence from a range of stakeholders): 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. The view we expressed in paragraphs 3.52 and 6.122 also stemmed from other sources. The CML Handbook at the time (now superseded by the UK Finance lenders' handbook) indicated that a number of lenders other than Nationwide had some sort of lending criteria based on the 0.1% threshold. Moreover, many of the almost 1,100 consultees who responded to our consultation "Leasehold home ownership: buying your freehold or extending your lease" (Consultation Paper No 238) referred to ground rents of above 0.1% as being onerous. As we noted at paragraph 6.138, of the consultees who supported a restriction on the level of ground rent that is taken into account in enfranchisement valuations, over half favoured a cap at 0.1% of the freehold value. We published all the consultation responses we received on our website. As we note above, our references to the 0.1% level in our Report constituted our own conclusion concerning the level above which ground rents would generally be considered onerous. We therefore set out an option (rather than a recommendation) for reform, for Government to consider:

Our discussion of the ground rent cap was about identifying, as a matter of legal policy, a suitable threshold above which legitimate concern can be raised about the level of ground rent in a lease – in other words, a threshold above which ground rents could properly be considered to be onerous."

373. It is apparent from that letter that the Law Commission had drawn on a number of sources in suggesting 0.1% as the appropriate cap. The claimants sought to take some comfort from the words “a suitable threshold above which legitimate concern can be raised about the level of ground rent in a lease”, suggesting, “in other words it goes further than setting a threshold that is tailored to capture the worst excesses in the market and designed to be the least intrusive measure.” That comment was based upon the wrong legal test, “least intrusive measure”, rather than the correct test, “less intrusive measure”. Furthermore, it ignored the following words in the letter, “in other words, a threshold above which ground rents could properly be considered to be onerous”.
374. The Law Commission’s letter and its reports referred to the HCLGSC Report. The claimants objected to any reference to this report to establish what they say is a contentious issue of fact, having regard to Article 9 of the Bill of Rights and the decision in *Office of Government Commerce v Information Commissioner* [2008] EWHC 774 (Admin); [2010] QB 98. It is not necessary for us to refer to the report and engage with this debate, although we note that Parliament would have been under no similar inhibition about informing itself as to the contents of that report when framing the Ground Rent Cap. The Government response to that report, published in July 2019, stated “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” (page 18 and [48]).
375. The DLUHC consultation paper “Modern leasehold: restricting ground rent for existing leases” of 8 December 2023 discussed at [1.28] the impact of ground rents on mortgagees’ assessments of affordability, and stated that “evidence suggests that above certain threshold (often £250 or 0.1% of the freehold value of the property) some either have policies that prevent lending or, in the absence of a policy, are likely to exercise a discretion that may lead them not to lend.” At [1.51], the consultation paper stated, “the percentage that we hear called for most often is a cap of 0.1% of the property’s value, on the basis that ground rent above this can adversely affect a person’s ability to get a mortgage on that property, according to the criteria set by some mortgage providers”.
376. The IA of 31 October 2023 also addressed the 0.1% figure. It noted at [50] that “many” lenders were using a 0.1% threshold to determine “whether to lend” or at least “seek further checks”. At [136], the IA referred to “clear evidence that the 0.1% cap is used as a benchmark by sectors of the mortgage industry, causing delays and difficulty for leaseholders in securing a mortgage and selling their property.”
377. On the basis of this material, we do not accept the argument that there was no sufficient evidential basis for the conclusion given legislative effect in the LFRA 2024 that the Ground Rent Cap should be set at 0.1%. Parliament was entitled to conclude that ground rents of 0.1% of FVPV represented a fair cost for the consideration provided and that, above that level, there was a sufficient concern of ground rents affecting saleability or mortgageability to merit legislative intervention. For that reason, the calculation of the Term element of an enfranchisement premium with a ground rent input which did not exceed 0.1% did not have the effect that the premium ceased to be “reasonably related to market” value, because its effect would be to remove only “onerous” ground rents from the calculation. The selection of 0.1% falls well within the legislative margin of appreciation.

378. The claimants' attack on that conclusion involved placing evidence before the court of the lending practice of different financial institutions which were said to be inconsistent with the material which underpinned the choice of 0.1% in the LFRA 2024 (to which the Secretary of State responded). That material did not come close to persuading us that there was no proper evidential basis for the selection of the 0.1% cap, and if anything pointed to the contrary conclusion:
- i) The Nationwide lending criteria as last modified on 13 February 2025 for leasehold properties, provided that for second hand properties, ground rents greater than 0.5% of FVPV were "unacceptable", with ground rents above 0.1% being "referr[ed] to issuing office" where "valuer will consider any impact on valuation figures and marketability". For new build properties, ground rents above a peppercorn were unacceptable (a provision reflecting the Leasehold Reform (Ground Rents) Act 2022);
 - ii) The Barclays Bank lending criteria, last amended on 20 February 2025, state that there is no objection to periodic increases in ground rents which can be readily established, but that ground rents which "may materially affect the value of the property" must be reported. In respect of RPI-linked, doubling or fixed increase ground rents, "ground rent up to 0.1% of the current market value is acceptable", with properties with a ground rent of between 0.1% and 0.2% being subject to review. Where the 2022 Act applied, only a peppercorn ground rent was acceptable;
 - iii) The HSBC lending criteria, last revised on 12 August 2024, required "reasonable" ground rents, with a £250 cap (£1,000 in Greater London) for acceptable ground rents, and a separate cap of 0.2% of value, or 0.1% for new builds;
 - iv) The Santander lending criteria last revised on 21 April 2025 required reporting of "onerous ground rents", which was illustrated by reference to certain forms of escalation provision but did not stipulate a particular numerical cap;
 - v) The National Westminster Bank plc lending criteria last modified on 15 May 2025 required ground rent increases to be readily capable of being established and reasonable. Onerous ground rent terms were to be reported, including certain forms of escalation provision. No numerical cap was specified;
 - vi) Lloyds Bank plc's lending criteria last modified on 26 February 2025 were in similar terms to those for the National Westminster Bank plc;
 - vii) We were also referred to material concerning a number of smaller lenders in the mortgage market. TSB lending criteria as last revised on 23 September 2024 required ground rents on properties built before 2005 to be "reasonable" (with no numerical limit), but not to exceed 0.1% for new builds and second-hand properties built after 2005. The Co-operative Bank, Skipton Building Society, Hodge Bank and the Darlington Building Society all had a maximum of 0.1% FVPV requirements for leasehold lending.
379. We are satisfied that this material provides a more than sufficient evidential basis for Parliament's decision to set the cap at 0.1%. It sufficed that this was clearly a threshold

of some significance in many lending contexts (even if only by triggering a more intensive scrutiny and consequent delay for achieving a binding contract). It also fell within a range recognised by the RICS and market practitioners above which a ground rent is capable of reducing the value of a leasehold property and in that sense is onerous. In setting the 0.1% cap, Parliament was entitled to have in mind the interaction of ground rents with other factors influencing the terms on which mortgage offers might be made, and to choose a “forward leaning” rate, which would also allow for the fact that lending criteria might change over time if and when the mortgage market tightened.

380. We can deal more briefly with the other complaints advanced by the claimants at this stage of the A1P1 enquiry:

- i) The claimants seek to rely upon the fact that the October 2020 Ministerial submission stated that a cap on ground rent of 0.1% of FVPV would “not affect most valuations” for enfranchisement claims. It is said that the significant impact on landlords was understated (the implication being that those impacts cannot have been taken into account). However, the comment in the Ministerial submission was concerned with the number of leaseholds affected (having referred to the fact that the CMA had found there were 3.5 million historic leasehold properties with low annual ground rents, which would have constituted the great majority of the 4.5-4.98m leasehold properties referred to in the pre-legislative materials). That there was a significant aggregate financial impact on landlords emerged clearly from the IA. We do not believe the claimants presented the court with figures as to the number of leases which it was estimated would be impacted by the cap (but see [343(iii)] above). That impact would necessarily be felt in leases with actual or expected ground rents above 0.1%, and the size of the impact “per lease” in financial terms would reflect both the size of the ground rent in absolute terms (which would in turn be influenced by the size and location of the property) and the extent to which the ground rent exceeded 0.1%;
- ii) A complaint was developed by Mr Jourdan about the feature of the Ground Rent Cap as given effect in the LFRA 2024 which we identified at [347] above: that when a calculation is done for the Term element of the enfranchisement premium against the background of a contractual right to increase ground rent in the future, the cap applied to the future ground rent is 0.1% of the present FVPV (i.e. at the valuation date for the claim). We accept that in the assessment of compensation, the LFRA 2024 will limit the value of the contractual right to increase ground rent by reference to 0.1% of the FVPV at the date of valuation. Mr Jourdan submitted that this was “irrational” because there was no indexation of the cap. This relatively granular criticism of the legislative scheme received limited attention at the hearing, and it is not clear to us that it was raised in advance. Clearly introducing additional valuation exercises at the date of future ground rent revisions would have added to the complexity of the scheme, which was the point Mr Loveday raised in response. Furthermore, the extent of any valuation “loss” would depend in any particular case upon how many future reviews might be involved, their terms, how far distant in time they might be and predicting how FVPV might change in future. Not surprisingly, we were not shown any material seeking to calculate the likely financial effect of the LFRA 2024’s simplifying mechanism compared to any alternative. While we

appreciate Mr Jourdan’s “purist approach” we consider that the simpler approach chosen did not render the balance struck unfair or fall outside the legislature’s margin of appreciation;

- iii) A complaint was made that it will be practically impossible for landlords to bring themselves within the exceptions, either because the ground rent and original premium will have been agreed many years ago, or because the current landlord may well have acquired the freehold in the secondary market and not be party to the original bargain. However, the pre-legislative material suggests that ground rent escalation provisions largely emerged after 2000 (e.g. the Law Commission Consultation Paper, [15.50]; the 2017 UPP, [4.3]-[4.6] and response of December 2017, [48]; the MHCLG consultation of October 2018, [3.2]; footnote 41 to the IA; the CMA Update Report, [53] and [66]-[68] and the foreword to the DLUHC consultation of 8 December 2023 and [1.17]-[1.19] and [1.26]), and that ground rents tend to be a greater source of landlord income for more modern properties (IA, [134]). To the extent that landlords’ complaints relate to secondary purchases, it was open to purchasing landlords to seek contractual rights of information, and, for all we know, many may have done so. In any event, market evidence will provide a basis for testing the assertion that a lease included a below-market premium with a higher ground rent;
- iv) Complaint is made about the absence of compensation, with reference to *Lithgow v UK* (1986) 8 EHRR 329, [120]. We have addressed the issue of compensation in the A1P1 context at [107] and [179]-[182] above. We remind ourselves that the property right in issue for A1P1 purposes is the freehold or extended lease being compulsorily transferred to the tenant through enfranchisement. Compensation is being paid for the loss of that property right, including, through the Term value of the enfranchisement premium, the attendant right to receive ground rent. The cap, as we have stated, is linked to the market value of the property which is the subject of the lease and, as we have stated, was set at a level which Parliament was entitled to conclude fairly remunerated the landlord. In those circumstances, the particular considerations identified in *Lithgow* are not engaged here;
- v) We have addressed the complaint about alleged retrospectivity at [152]-[160] above.

Conclusion

- 381. We have concluded that capping the ground rent at a level which excludes onerous ground rents from the calculation of the enfranchisement premium, but which allows ground rents up to a percentage of the FVPV (a market value) at the date of valuation, will not result in a landlord receiving compensation which is not reasonably related to the market value of the interest of which he is deprived and which represents a proportionate means of pursuing the legitimate objects of the LFRA 2024. The Ground Rent Cap cannot be criticised on the basis that a less intrusive measure ought to have been adopted, nor that there was no sufficient evidential basis for the selection of a cap of 0.1%. Taking all of these matters into account, we reject the proportionality challenge to the Ground Rent Cap which we are satisfied represents a fair balance between the objects of the LFRA 2024 and the impact on landlords, including specifically the impact on each of the claimants.

11. The Marriage Value Reform

382. Mr. Jourdan for the Abacus claimants and Mr. Maurici for C&G led on the claimants' submissions on marriage value. The other claimants adopted those submissions. Mr. Fitzgerald KC made some additional submissions on the specific position of John Lyon's Charity.
383. Prior to the LFRA 2024 the House of Lords had decided in *Sportelli* that the effect of the statutory assumption that an enfranchising tenant may bid in the hypothetical transaction for determining the value of his landlord's interest is that:
- i) For claims in relation to houses, marriage value attributable to the merger of the interests of the landlord and tenant is to be taken into account, but not "hope value", namely the hope that those interests would be merged in future, as that would involve impermissible double-counting;
 - ii) The principle in (i) also applies to a tenant's claim to acquire a lease extension of a flat under Chapter II of Part I of the LRHUDA 1993;
 - iii) In a claim for collective enfranchisement the landlord is entitled to a share of marriage value in relation to the flats of participating tenants and of hope value in relation to the flats of non-participating tenants.

For valuations within s.9(1) of the LRA 1967 relating to low value houses, the assumption that the tenant is not and will not be in the market, excludes both marriage value and hope value from the assessment of the price payable. As we have said, the CLRA 2002 provided that where the valuation is to take into account marriage value, that value is to be apportioned 50:50 between the landlord's interest and the tenant's interest.

384. In addition, the CLRA 2002 amended the LRA 1967 and the LRHUDA 1993 so as to require marriage value to be ignored where more than 80 years of the term of the tenant's lease remained unexpired, because it was judged that the amount of any marriage value would generally be insignificant.
385. When brought into force, para.17(3) of the LFRA 2024 will exclude marriage value from the enfranchisement price payable, where 80 years or less of the term remain unexpired, by requiring it to be assumed that the claimant, or the nominee purchaser in the case of a collective enfranchisement, is not seeking, and will never seek to acquire, the relevant interest.
386. Both the submissions on Marriage Value Reform and many of the pre-LFRA 2024 papers describe the Reform as effecting "a transfer of marriage value" from the landlord to the tenant. It is important that this choice of language is not misunderstood. As explained below, it would be wrong to characterise marriage value (or at least the landlord's "share" of it) as a pre-existing asset of the landlord which, through the enfranchisement process as reformed by the LFRA 2024, is subject to compulsory transfer from the landlord to the tenant without compensation. The asset transferred is the landlord's reversionary interest or an extended leasehold interest. Marriage value is a valuation concept used by valuers, including under the pre-LFRA 2024 enfranchisement regime, when determining the amount to be paid by the tenant to the

landlord in return for enfranchisement. Whether it arises and, if so, the amount, will depend upon the length of the term remaining when a right to enfranchise is exercised. Because the effect of the Marriage Value Reform is that a landlord will no longer be entitled to a 50% share of any marriage value created by the exercise of a right to enfranchise, to that extent the compensation for his interest will be reduced, and the value of the tenant's interest correspondingly increased. Even before enfranchisement takes place, and the actual extent of any effect on marriage value can be ascertained, the Reform is likely to have increased the value of many leasehold interests and reduced the value of many reversionary interests. The references to a "transfer of marriage value" are a shorthand for these economic effects of the LFRA 2024, whether for an individual leasehold or aggregated for leaseholds generally.

Marriage value and the problem of the tenant's lease as a wasting asset

387. The valuation concept of marriage value applies much more widely than in the circumstances of enfranchisement claims. For example, two neighbouring areas of land put to the same use may be merged so as to achieve a more efficient or productive operation for that purpose. So, in *Sportelli* Lord Hoffmann referred at [2] to the sale of a small farm located in the middle of a much larger agricultural estate. Alternatively, a special bid may be made by a neighbour in order to change the use of adjoining premises and to operate them as an expansion of an existing business (such as the nursing home in *Clay*). In such cases, the interests in both of the properties merged may be freehold and so neither is a wasting asset in terms of tenure.
388. However, in the present context marriage value is used differently to describe the merger of two different property interests in the same property held by different owners. There is a further difference. One of those interests, the freehold reversion, is a permanent asset and the other, the long lease, is a wasting asset. The freehold reversion will become a freehold with vacant possession upon the expiration of the term of the lease, unless, of course, the lessee is able to, and does, enfranchise, or a voluntary transfer takes place.
389. This type of marriage value is not an intrinsic feature of the land itself as a unit of real property. It can only arise where a landowner or his predecessor in title has chosen to create a lease out of his interest and thereby assume landlord status. Even if he does so, marriage value cannot be realised if the tenant is not in the market to acquire the reversion. If that interest is sold to any other party, the open market value will comprise the term value (the capital value of the right to receive the rental stream) and the reversion value (the deferred value of the right to vacant possession at the end of the term), but not marriage value. The only other element which may be payable by a third party is hope value, the value of the possibility that the tenant may wish to acquire the reversion at some point in the future. The realisation of marriage value is dependent upon the tenant choosing to buy the reversion from a landlord who is willing (or deemed to be willing) to sell (or *vice versa*)
390. Even if these conditions are met, whether marriage value arises and if so, to what extent, varies considerably over time. For example, when a 99-year lease is granted there will be no marriage value. Significant marriage value does not arise until the unexpired term of the lease falls below about 80 years. It reaches a maximum when the lease has about 35 to 40 years to run (see Lord Neuberger in *Sportelli* at [63] and the similar view

expressed by Mr. Roberts at para.98(d) of his report dated 11 December 2024) before declining to zero as the term approaches its expiration.

391. There is also broad agreement that since the CLRA 2002, the market has treated a lease with an unexpired term of less than 80 years as a short lease. Lenders are generally unwilling to provide mortgage finance for the acquisition of such leases, which are therefore difficult to sell in the market. The tenant has a wasting asset which is increasingly difficult to sell and thus needs to buy the freehold reversion or a lease extension at a price which, it is said, should include a share of marriage value. Worse still, if he should delay, the amount of marriage value will increase over a period of about 40 to 45 years until the unexpired term has only about 35 years to run.

392. In *Sportelli* Lord Hoffmann summarised the economic pressures to which such a tenant is subject at [3]:

“When the property to be valued is a freehold subject to a long lease, there is an obvious special purchaser, namely the tenant. The reversion is worth more to him than to others because his lease is a wasting asset, the value of which will inevitably decline to zero unless reinvigorated by extension or merger with the freehold. Thus the value of the lease merged with the reversion is always greater than the sum of the separate values of the two interests. The difference will vary according to the length of the lease: if the unexpired term is very long or very short, so that the reversion or the lease are respectively worth little, the additional value of merger will be low. But when the unexpired term is about to dip below the length which is regarded as adequate security by lenders in the market, it may be considerable. This difference is called the ‘marriage value’.”

393. Lord Hoffmann went on to add that a tenant may not want to buy the landlord’s interest because, for example, of a lack of funds. An investor who purchases the reversion may therefore pay hope value to take into account the possibility that sooner or later the tenant (or a successor in title) will buy the reversion and thereby make a profit from the realisation of a share of marriage value [4]. Of course, the tenant may still remain unable (or unwilling) to fund the costs of acquiring the reversion and may have limited options available to him.

394. In his skeleton at [16] and [35] Mr. Jourdan referred to the tenant’s serious lack of bargaining power in the absence of enfranchisement legislation. As an example of this he referred to a transaction in Eaton Terrace, London SW1 (mentioned in the decision of the Lands Tribunal in *Arbib v Earl Cadogan* [2005] 3 EGLR 139 at [106])) in which the tenant agreed to pay the landlord 75% of marriage value in a transaction outside the statutory code. Even more telling is the analysis of “the wasting asset” problem by the authors of *Hague: Leasehold Enfranchisement* (7th edition) at para.1-18, part of which states:

“The landlord holds all the cards in any negotiation. The landlord is the only person from whom the leaseholder can obtain the freehold or a longer lease, and so has a completely monopolistic and unassailable negotiating position. There are

few comparable situations where the bargaining positions are quite so unequal.”

The House of Lords endorsed those views in *Majorstake Limited v Curtis* [2008] UKHL 10; [2008] 1 AC 787 at [21]-[23] and *Howard de Walden Estates Limited v Aggio* [2008] UKHL 44; [2009] 1 AC 39 at [36]-[41]. They added that the policy of enfranchisement legislation to provide a remedy for such issues, as “a staging post on the journey towards freehold flats”, applied just as much to lessees who are commercial investors as to those who are resident occupiers.

395. This leads us back to the problem which has continued to be at the centre of discussion on leasehold reform for many years, the imbalance and unfairness inherent in the relationship between landlord and tenant in a long lease of a dwelling granted in return for a large, up front capital sum. In summary:
- i) The original tenant pays a premium, which together with any ground rent, may be little or no different from the price payable for the freehold of comparable property, or be relatively similar thereto;
 - ii) Like a freeholder in possession, the leaseholder is responsible for the cost of repairs and maintenance throughout the term of the lease;
 - iii) Unlike a freeholder, the leaseholder has a wasting asset which will eventually become worthless when the house and land revert to the freeholder at the end of the term.
396. By definition, this inherent unfairness or imbalance is an intrinsic feature of all long leaseholds structured in this way, irrespective of the character of the tenant. It is not specific to, for example, leases owned by resident occupiers or to tenants who have less access to professional advice on the implications of leasehold ownership.
397. A purchaser of a new lease for 99 years of a flat will not pay anything to the landlord for marriage value at that stage. As we have said, there is significant material to indicate that there is relatively little (or at least insufficient) difference between the prices paid for a freehold as compared with such a new lease (see [117]-[122] above). For both landlord and tenant, marriage value is simply a valuation concept which is relevant only for part of the subsequent duration of a lease and expresses the relative differences over time between (1) the value of the lease of a dwelling, (2) the freehold reversion to that lease and (3) the FVPV of that property. Marriage value is generated because of the wasting nature of the tenant’s lease.

Consideration of marriage value in documents leading to the LFRA 2024

398. We have summarised this material between 2017 and 2025 in section 7 of this judgment. At this stage we refer to certain specific matters addressing marriage value.
399. The Law Commission’s Consultation Paper contained the following points:
- i) The Commission summarised views on whether leasehold tenure is inherently unfair ([1.39]-[1.46]). “Many leaseholders, when they acquired their lease, will

have paid a premium that was not substantially different from the value of freehold interest in the property”. Consequently they consider that a landlord’s entitlement to enfranchisement compensation involves them being asked to pay again for a property they had already “bought” [1.40], [1.42] and [14.2]. At [1:42]:

“Leaseholders often find themselves compelled to make an enfranchisement claim, either (i) because they wish to sell their lease and a purchaser can only be found (or will only be able to obtain a mortgage) if the length of the lease is increased, or (ii) because they know that the cost of doing so in the future will likely be higher than it is at present. They are compelled to make a claim in order to be able to protect the value of their interest from reducing further. And in many cases, that interest is not only an asset but also their home.”

- ii) From 1987, collective enfranchisement in a block of flats was seen as a route to commonhold [2.13]. Part of the rationale for the Bill which led to the LRHUDA 1993 was that their wasting nature made long leaseholds as a form of tenure unfit for purpose, reflecting a shift away from leaseholds generally [2.17];
- iii) The Law Commission described the methods for assessing marriage value at [14.53]-[14.66], including the complexity of valuing the leasehold as if it did not benefit from a right to enfranchise, whereas that benefit is priced in to comparable evidence in the real world;
- iv) The Commission’s option 2A for consultation involved limiting the landlord’s compensation to term value and reversion value (i.e. excluding marriage value and hope value). The compensation would represent what the landlords would receive if the lease were to run its full course [15.92].

400. The Law Commission’s Valuation Report (No.387) contained the following points:

- i) The perception of the inherent unfairness of leasehold tenure and the wasting asset issue were reiterated [1.9], [1.13], [3.4]-[3.11] and [5.101];
- ii) The Law Commission changed its approach from the Consultation Paper so that its suggested schemes for assessing market value were based on different assumptions about the market in which the landlord’s interest is being valued [5.79] and [5.88]. This accorded with the observations of Lord Walker in *Sportelli* at [34] (see [187] above). Scheme 1 would assume that the tenant is not in the market to buy the reversion and never will be, with the consequence that marriage value and hope value would be excluded [5.85];

- iii) Scheme 1 reflected the following points [5.101]:

“... On the other hand, leaseholders would argue that the fact that their need to make an enfranchisement claim is borne out of the limited and wasting nature of the asset that they hold means that it is unfair for the landlord to be able to make a profit out of selling his or her interest to the leaseholder rather than to a third party. A landlord should receive the value of his or her asset in

the eyes of a third party, and not a profit made as a result of the leaseholder's willingness to outbid the third party in order not to lose his or her entitlement to possession of the property."

iv) The Law Commission stated at [5.102]:

"There are competing arguments as to whether the leaseholder, as special purchaser, should be ignored. Landlords would say that enfranchisement is common and the necessity to enfranchise ought to be well-known to leaseholders, so it is acceptable for their presence in the market (and therefore the payment of marriage value) to be taken into account. On the other hand, leaseholders would say that the very fact that enfranchisement is necessary and common provides even more support for a regime under which only the landlord's loss, rather than the landlord's profit, is to be paid. Leaseholders are, in effect, being penalised for enfranchising; they are forced to enfranchise because their lease is running down, but at the same time they have to pay more than any other person would have to pay for the freehold. Leaseholders would also say that Scheme 1 still produces a market value because there is no guarantee that a leaseholder will ever enfranchise – the lease might just run its course."

401. The Law Commission's Enfranchisement Report (No. 392) contained the following points:

- i) The reforms proposed by the Law Commission and by the Government were intended to create "fit-for-purpose home ownership" and fell into two categories: (1) reforms laying the foundation for homes to be owned in the future as freehold (i.e. commonhold) and (2) reforms to address the problems faced by those who continue to be tenants ([1.8]-[1.12]);
- ii) The Law Commission set out reasons as to why leasehold tenure is considered to be imbalanced and inherently unfair and therefore unsuitable for the ownership of residential property [1.25]-[1.33]. That imbalance arises from the time-limited nature of a long lease [1.26];
- iii) Under the heading "Problems with the current law" the Law Commission stated that although tenants of long leases buy their asset at a value close to or equivalent to freehold value, the time-limited nature of that asset results in tenants finding themselves compelled to make an enfranchisement claim, because they cannot find a purchaser for their property, or a mortgage cannot be obtained, unless the lease is extended, or because they know that the cost of enfranchisement will be higher in the future [2.18]. We note that the Law Commission referred to these matters again when dealing with the question whether tenants should pay landlords' non-litigation costs in connection with enfranchisement (e.g. [12.31]).

402. At [249]-[250] we have summarised the aims of the valuation reforms in the LFRA 2024 as set out in submissions by officials to Ministers on 23 October 2020.

403. The IA produced in October 2023 contained the following points:

- i) There are a number of economic market failures in the residential leasehold sector, beginning with the inherent power imbalance between landlords and tenants [6];
 - ii) There were three additional justifications for legislative intervention, which included the extra costs and complexity of a tenant having to pay marriage value where the unexpired term of his lease is 80 years or less;
 - iii) Instead, it was proposed to compensate a landlord as if the lease would run to its end date. He would receive the present value of the future rental stream to which he is entitled and his reversionary value. The reversion represents the value of the demised property with vacant possession, on the basis that it is deferred to the date when the tenant's wasting asset expires ([7] and see also [34]);
 - iv) The IA reiterated the wasting asset problem which results in the costs of enfranchisement being increased by a tenant having to pay 50% of marriage value [26];
 - v) The Bill sought to rebalance those costs by *inter alia* removing the requirement to pay the marriage value component [28];
 - vi) The summary of the policy objectives at [75] referred to making the leasehold market fairer, by *inter alia* addressing the inherent power imbalance between tenants and landlords;
 - vii) The Government took the view that the Bill was necessary so that "all leaseholders" would benefit from the reforms ([78] and see also [137]).
404. The overall package of valuation reforms, including the prescription of capitalisation and deferment rates would make enfranchisement valuations simpler and more transparent. As a result, parties would be able to use the Government's online calculator of the purchase price, so that their need to incur fees for professional valuation services would be reduced and, at the very least, they would be able to understand the likely cost of enfranchisement [154].
405. We have already referred to the treatment of marriage value in the ECHR Memorandum published on 16 February 2024 (see [271] above).
406. The material which we have summarised above was available to Parliament when it considered the draft legislation, save for the ministerial briefing. But that briefing was in any event consistent with the other material referred to.
407. We have also considered the agreed schedules of Hansard material. It is apparent that Parliament debated whether landlords should or should not continue to receive a share of marriage value. They also considered whether it was appropriate for that share to inure to the benefit of enfranchising tenants, including non-occupying tenants, such as commercial investors and overseas investors. In addition, a number of amendments to the Bill were tabled addressing such matters. Those amendments were either withdrawn or not moved.

Aims

408. For the reasons set out above at [338]-[340], the removal of marriage value from the assessment of a landlord's compensation for enfranchisement is rationally connected to legitimate aims for the purposes of justifying the interference with the deprivation of possession rule in A1P1.

The claimants' arguments on the justification for the Marriage Value Reform

409. The claimants submit that the exclusion of marriage value from enfranchisement compensation is not justified by the aim of seeking to redress the imbalance between landlords and tenants of residential long leases and addressing the inherent unfairness of leasehold as a model of property ownership. They argue that case law establishes that the equal division of marriage value involves a fair outcome in the assessment of the price for enfranchisement. It is said that the Secretary of State, and ultimately the legislature, have misunderstood the effect of that case law and so their striking of a fair balance between landlords and tenants is flawed.
410. The short answer is that (1) the claimants' argument misunderstands, or effectively ignores, the nature of the imbalance in the relationship between landlords and tenants identified, (2) the case law cited by the claimants does not deal with that imbalance and (3) it has fallen to the legislature to take a political decision on whether to take steps to redress that imbalance.
411. Before the enfranchisement code was enacted the landlord held *all* the negotiating cards as to whether the tenant would be granted *any additional interest at all* (see [394] above). By giving tenants a right to enfranchise, the code has removed that particular imbalance. But there remains the imbalance to which the Law Commission has referred. The reforms in the LFRA 2024 apply to a leasehold model which broadly involves a tenant making a relatively similar overall outlay as the purchaser of a freehold. But the wasting nature of a leasehold compels a tenant to make a claim to enfranchise in order to protect and restore the value of that investment by making a payment, which may be substantial, and incurring fees in addition to the premium originally paid and any rental obligation.
412. This raised a political question for the Government and the legislature as to the basis upon which that additional payment should be assessed, bearing in mind the consideration which a tenant will have paid for the grant of a long lease in the first place. Given the constitutional separation of functions between the legislature and the judiciary, that is not an issue for the courts, save and in so far as it arises on a challenge to the compatibility of legislation with A1P1. In the cases cited to us, the court was not asked to address any such challenge. Instead, the decisions were concerned with the interpretation and application of domestic legislation, including the statutory valuation scheme for enfranchisement as it stood.
413. Accordingly, UK courts have not previously been asked to address the socio-economic need accepted by Government and the legislature to redress the wasting asset problem and the *continuing* imbalance between landlords and tenants; nor the solution chosen of removing marriage value from enfranchisement compensation, whilst maintaining the entitlement of landlords to receive term value (subject to the 0.1% Ground Rent Cap) and reversion value.

414. Nevertheless, Mr Jourdan relied on a number of cases which had considered the concept of “marriage value” in the context of United Kingdom compulsory purchase legislation in support of his contention that “marriage value” is inherent in a valuation reasonably related to market value, and that it reflects an aspect of a landlord’s proprietary interest in a property. We have already observed that cases addressing compensation for “distinct expropriations” represent a very different context to legislation such as the LFRA 2024 ([107]-[115] above), and that the measure of compensation adopted for distinct expropriations under UK law has its own distinct history, in which measures of compensation relating to market value and marriage value have varied over time ([184]-[189] above). But in any event, we do not consider the compulsory purchase cases provide the assistance which Mr Jourdan suggests.
415. The first, *Lambe v Secretary of State for War* [1955] 2 QB 612, was an unusual case. A building and its grounds were occupied as the headquarters of a Territorial Army unit which had bought a 99-year lease with only 41 years unexpired. Two years later the Secretary of State served a notice to treat upon the officer who held the freehold reversion. It appears from the decision of the Lands Tribunal that the only purpose of the acquisition was to merge the leasehold and freehold interests in order to be freed from restrictive covenants in the lease ((1953-54) 4 P & CR 230). The basis upon which compensation was to be assessed for that freehold reversion had to be determined. Applying the legislation on compensation for compulsory purchase, the Court of Appeal decided that the compensation for that interest should be what the sitting tenant would be willing to pay in a friendly negotiation and as though no compulsory powers had been obtained. Thus, the tenant’s purpose in seeking to marry his interest with that of the landlord fell to be taken into account, just as it would in an open market transaction. The Court applied *Raja Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam* [1939] AC 302, at 312 (“the *Raja* case”), in which it was held that although the motivation of a particular purchaser (e.g. a sitting tenant) to bid more than others in the market is relevant, that bid must not be assessed as though he were acting under compulsion or urgent necessity.
416. In *Waters v Welsh Development Agency* [2004] UKHL 19; [2004] 1 WLR 1304, when considering the ambit of the legal principle for disregarding an acquiring authority’s scheme in compensation for a compulsory purchase, Lord Nicholls approved *Lambe* at [37]. The amount that the sitting tenant would have been willing to bid, including marriage value, was a relevant consideration, which remained unaltered by the fact that the tenant was also the acquiring authority.
417. In *Lambe* the Army was content to take an assignment of a lease with only 41 years unexpired. Neither *Lambe* nor *Waters* were decided in the context of the wasting asset problem and the imbalance issue which the enfranchisement code and the reforms introduced by the LFRA 2024 seek to address. Both were concerned with “distinct expropriations”.
418. Next Mr Jourdan turned to case law on the LRA 1967. In *Lloyd-Jones v Church Commissioners for England* [1982] 1 EGLR 209 the tenant’s bid had to be taken into account in assessing the price payable for the enfranchisement of the freehold reversion of a house. There was no issue as to whether that bid would include a share of marriage value. The Tribunal applied the “friendly negotiations” approach in *Raja* and *Lambe* and decided that the parties were of equal bargaining strength when it came to deciding how marriage value would be apportioned and so that element was divided 50:50. But

the reason why the Tribunal decided that the bargaining strengths were equal was that “neither can unlock marriage value without the other”. It is plain that that was simply the Tribunal’s judgment as to how the hypothetical sale of the freehold would be conducted for the purposes of the statutory valuation exercise in the specific context created by the leasehold model of property ownership. The statement that neither party could unlock marriage value without the other says nothing about the tenant’s wasting asset problem which gives rise to the need for him to buy out the landlord’s interest in the first place by having to make an enfranchisement claim. Of course, that is not a criticism of the Tribunal’s decision. The wasting asset problem, any need for the enfranchisement code to be reformed, and the application of A1P1 were not before the Tribunal.

419. In *Sportelli* Lord Neuberger referred at [61]-[62] to *Lloyd-Jones* and other decisions of the Lands Tribunal to point out that tenants who had argued for the landlord to receive a smaller share of marriage value than 50% had been unsuccessful. But as he said, that was simply a valuation matter. Neither *Sportelli* nor those decisions dealt with the wasting asset problem which the LFRA 2024 was intended to address.
420. Likewise *Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC); [2016] L.&T.R. 32 (see e.g. [126]-[128]) and *Cooper-Dean* (e.g. [71]-[73]) do not address that problem and do not assist this court.
421. As Lord Hoffmann explained in *Sportelli*, the particular type of marriage value with which the enfranchisement code is concerned is only generated because long leaseholds are wasting assets. That is the very problem which the amendment of the code is intended to address. Accordingly, the Marriage Value Reform is justified because marriage value is the product of the wasting asset problem and the inherent unfairness in the long leasehold relationship which it is the object of the enfranchisement code to address.
422. Next Mr. Jourdan submitted that the pre-LFRA 2024 enfranchisement code has existed for decades and is reflected in the market prices paid for leases and reversions. He suggested that there would therefore have to be strong evidence of serious problems to justify the changes under challenge and any changes would need to be carefully targeted to solve the problems of those affected without creating windfalls for others. Mr. Jourdan addressed this topic in paras.15 to 20 of his skeleton and in his oral submissions.
423. He submitted that when long leases of residential premises are assigned, the prices paid reflect the benefits of the right to enfranchise and the anticipated cost of enfranchisement under the valuation code before amendment by the LFRA 2024. Similarly, when a reversion is sold the price paid is based not only on the present value of the rental stream contracted to be paid, but also the expectation of additional profits through the realisation of a share of marriage value.
424. The problem with an argument of this kind is the corollary: socially desirable or necessary amendments to legislation should not be made because over the years parties have made their arrangements with a claimed expectation that the scheme will not be changed. This is really a variant of the retrospectivity argument which we have addressed at [152]-[160] above. However, the making of commercial or property agreements does not of itself give rise to a reasonable expectation that an existing

statutory regime will remain unchanged in the face of reform which the legislature judges to be necessary.

425. Parties may choose to arrange their affairs on the basis of legislation as it exists and hope that it will not be amended, but in doing so they take the risk that it may change and, indeed, in ways which may be unpredictable. That risk has certainly been present in enfranchisement from an early stage, as is evidenced by the number and nature of the changes which have been made to the regime from 1969, and the manner in which the legislature has continued to re-visit what was seen as presenting a continuing social problem which prior legislation had not sufficiently addressed. The issue of reform has frequently been under consideration and the wasting asset problem has been a perennial problem (see for example the quotations from the 2000 Consultation Paper at [66]-[67]).
426. It is also significant in this respect that entities which have accumulated significant holdings of freeholds have done so as a form of commercial activity, which necessarily involves the assumption of risk for reward, and the balancing of sector-risk across a wider portfolio, and that the landlord-tenant relationship is one which was itself brought into being for commercial gain. This is a relevant factor in the proportionality analysis (see *AXA*, [38]). Whereas the purchase of a reversion to obtain a steady stream of a non-onerous level of rent over a long time frame might be considered to be a relatively risk-free investment, the same cannot be said of the purchase of a reversion to reap payments of marriage value and hope value. Quite apart from the fact that marriage value is a once and for all payment, the timing and amount of which is unknown until an enfranchisement claim is made, it is the product of the wasting asset problem which has remained a candidate for reform.
427. Furthermore, there has been no attempt to show that, over time, it can reasonably be assumed that any “pricing-in” of the pre-existing enfranchisement code into the acquisition or assignment of a lease or a reversion has affected landlords and tenants in a similar way, whether the original parties to a lease or assignees of an interest. Similarly, it has not been shown how reforms could be targeted so as to reflect the winners and the losers resulting from the combined effects of any pricing-in of the pre-existing enfranchisement code and the reforms in the LFRA 2024. Furthermore, bearing in mind the “broad sweep” of legislation of this kind, we note that in *James* at [68]-[69] the ECtHR was not troubled by the ability of certain tenants to make windfall profits, even where they were not occupiers (see [164] above and see also *Wilson No.2* at [72]-[74]).
428. In any event, the justification for excluding marriage value from enfranchisement compensation has been shown to be strong. The inherently imbalanced and unfair relationship between landlords and tenants arises from the fact that, although there may be little difference between prices paid for freeholds and newly granted leases (and insufficient properly to reflect the differences between them), the latter is a wasting asset which declines in value to nil. The fundamental nature of this wasting asset problem applies to long leaseholds of dwellings generally as a form of tenure, irrespective of the purpose for which a tenant under a long lease holds his property. Tenants come under compulsion to enfranchise in order to protect and restore the value of their assets, and also so that they can remain marketable and mortgageable. Despite the consideration they have already paid (and may be obliged to continue paying by way of rent and service charges), enfranchisement requires tenants to pay a further

price. It is justifiable for the LFRA 2024 to remove marriage value from the price for enfranchisement, because that element of value only arises because of the wasting asset problem and the inherent imbalance and unfairness in the long leasehold relationship which it causes. Enfranchisement fails to deal fairly and logically with that imbalanced relationship caused by the wasting asset problem, in so far as it requires a tenant to pay to his landlord 50% or any part of the marriage value generated by that imbalance.

429. On the other hand, Parliament has fairly addressed the landlord's position by retaining compensation for term value (subject to the 0.1% Ground Rent Cap) and reversion value. Term value and reversion value together represent the value which the landlord could obtain in the open market from a third party. It is logical to disregard hope value as well as marriage value because both arise from a necessity for the tenant (or a successor in title) to enfranchise to address the wasting asset problem. This level of compensation provides the landlord with the sums he would have received for the wasting asset that was originally granted to the tenant, as if the lease were to run its full course.
430. Next, Mr. Jourdan submitted that where marriage value does arise, whatever the reason for the making of an enfranchisement claim, the tenant acquires an asset which is more valuable than the combined values of his lease and the freehold reversion and it is only fair that he should pay a half share of the additional value thereby created. He relies upon the then Government's draft Bill and the 2000 Consultation Paper: which shows the thinking on marriage value underlying the CLRA 2002. At that stage the Government was of the view that "in a compulsory purchase, landlords are entitled to a fair market price for their interest in the building, including a share of the marriage value which would normally occur in an open market sale between willing parties when leasehold and freehold interests are merged" (para.71). The language would suggest that this reasoning was influenced by the decision in *Lambe*.
431. But circumstances have changed since 2000 and thinking has moved on. The CLRA 2002 has not prevented continuing concern as to the adverse social effects of the leasehold property model, which has remained a topic of political and legislative concern. Further, an unintended consequence of the requirement in the CLRA 2002 that marriage value be disregarded where the unexpired term of a long lease exceeds 80 years was that leases with shorter terms remaining were treated as unsuitable for mortgage lending, became more difficult to sell and declined in value. Subsequent consultation exercises have revisited the nature of the economic relationship between the parties to long residential leases. We have explained the wasting asset problem and the imbalanced relationship resulting in tenants coming under compulsion to make enfranchisement claims requiring additional expenditure on their part. The exclusion of any marriage value arising from an enfranchisement valuation has been justified for the reasons already set out.
432. True enough, a landlord is compelled by the legislation to sell his reversion. Some may be unwilling vendors for their own reasons. But from the evidence we have seen, others, including some very substantial landlords, are in reality willing vendors because of their valuable opportunity to receive "income" from enfranchisement premiums, including marriage value. Not all claims to enfranchise are therefore unwelcome to respondent landlords. But there is a difference between freehold reversioners and enfranchising tenants. All of the former hold a permanent, non-wasting asset. All of the latter hold a time-limited asset depreciating to nil. In general, the latter are under a compulsion to

enfranchise to stop their asset depreciating to a nil value, and to be able to sell it as and when they wish to or use it as a means of raising capital for other purposes. That is so, even if some of the tenants (e.g. investors) wish to realise the value of their newly merged freehold and leasehold asset, including the uplift attributable to marriage value.

433. Accordingly, we do not accept that it would be right *in economic terms* to look at an enfranchisement claim as simply a compulsory acquisition of the landlord's interest. Quite apart from cases where the landlord is very much a willing vendor, it is also necessary to take into account the compulsion of the tenant to enfranchise at an additional cost to the investment he has already made in the dwelling in order to address the wasting asset problem. There is no data available to us to show the proportions of landlords and tenants who are acting either under compulsion or willingly when participating in an enfranchisement process. But in our judgment the comparison with compulsory purchase compensation drawn in the 2000 Consultation Paper presents an incomplete picture of the reality of enfranchisement claims generally and is therefore not a good analogy. The obligation placed by the enfranchisement code on landlords to sell their interests does not undermine or reduce the weight to be given to the justification for excluding marriage value in the valuation in order to address the wasting asset problem.
434. Some landlords complain that the reforms in the LFRA 2024 present some tenants with an opportunity to make a windfall profit by selling his enfranchised interest soon afterwards. Even if this should occur, the valuation examples we have been given show that, depending of course on the variables involved, the movement of marriage value in a manner adverse to the landlord and in favour of the tenant may simply offset the cost to the tenant of part or all of the term value and reversion value payable to the landlord and the tenant's own costs. Sometimes there may be a profit for the tenant, but:
- (i) This should be seen in the context of the wasting asset problem which applies to all types of tenant;
 - (ii) The courts have been willing to accept that a general measure justifiable in the public interest will result in a windfall for some of the parties;
 - (iii) Whether the tenant is a resident occupier, small investor, or large investor does not influence whether the adjustment of marriage value under the LFRA 2024 produces a net cost or a net profit for the tenant;
 - (iv) Following *James*, it has not been contended, and is not contended now, that the legislation should provide for case-specific assessment of whether a right to enfranchise is merited or deserved.
435. Ultimately, the claimed losses suffered by landlords do not undermine the justification for the Marriage Value Reform. Instead, they should be considered in the striking of the fair balance after having addressed less intrusive measures.
436. So far as these costs are concerned, Mr. Maurici relies on the criticisms made by his clients' experts of the IA and the Addendum IA, including the errors accepted by the defendant, as showing that those assessments were inadequate as the basis for deciding whether the substantial interference with the AIP1 rights of his clients and landlords

generally is justified. We have explained in section 8 above why we reject that submission.

437. Next Mr. Maurici advances the criticism that the Marriage Value Reform is untargeted because, according to analysis by Mr. Hunt, the removal of marriage value will disproportionately impact London, in particular PCL (see e.g. [4.4] of Mr Hunt's first report, [48] of Mr. Maurici's skeleton and the parties' Agreed Statement F). We summarise the following points:
- (i) A significant proportion of leases with 80 years or less unexpired are located in London (27% - although the IA also gives a figure of 36%);
 - (ii) London and the South East would account for 80% of the LFRA 2024's effect on marriage value in relation to flats;
 - (iii) The majority of marriage value is realised on transfers taking place in London, the estimates being relatively close (Mr Roberts gives 69% and the defendant's Addendum IA 66% - see para. 6 of the parties' Agreed Statement F);
 - (iv) 47% of London's (and 32% of England's) flat marriage value is located in three boroughs, Westminster, Kensington and Chelsea, and Camden.
438. The claimants submit that even after allowing for the fact that some flats will be let because the owner is working abroad for a period or the owner is unable to sell, so that those properties may only be sublet temporarily in the private rental sector, a large proportion of flats will be investment properties. For example, the owner may prefer to invest in property or may let a flat or flats as part of a pension plan. The claimants go on to point out that there is a high degree of overseas ownership of houses in PCL.
439. Accordingly, the claimants contend that the adjustment of marriage value in tenants' favour is, by reference to the *value* of properties, likely to benefit mainly tenants in London who are investors rather than resident occupiers. In PCL there is an increased likelihood that the adjustment of marriage value will benefit overseas investors in leaseholds of flats.
440. We do not consider that the claimants' points, even taken at face value, undermine or significantly reduce the weight to be given to the justifications for the Marriage Value Reform. In summary:
- (i) It does not address the importance attached to addressing the wasting asset problem for leaseholds held by all tenants across the country, a problem which is not realistically capable of geographic differentiation;
 - (ii) The IA explained that the movement of marriage value to tenants will be concentrated in London and the South East because leasehold property prices are highest in those regions and there is a disproportionately large number of flats in areas of London (para.137);
 - (iii) There is also a variation in incomes across the country. While marriage values may be smaller in areas outside London and the South East, the burden of paying them, as a proportion of income, may be similar (para.137 of the IA);

(iv) Paragraph 138 of the IA states:

“For this reason, some have argued that the transfer of marriage value will benefit already-wealthy households. The Government’s policy is intended to benefit leaseholders, without distinguishing between other factors such as property value or residency which might have unintended consequences. While some owners of short leases (80 years or less) may have purchased them at a comparatively low price that reflects the term remaining (and the cost of extension), other owners of short leases are those who have lived in the property for many years and been unable to extend due to lack of funding. To avoid artificial distinction between these groups, the reforms will apply to all leaseholders.”

(v) Although some tenants are overseas investors letting out their properties in London, some landlords are also overseas investors (para. 140). In other words, the merits of the arguments about the adjustment of marriage value does not turn on whether investors are based overseas.

441. For completeness we mention a further argument raised by Mr. Jourdan. He pointed to data suggesting that about 20% of freeholds are owned by companies owned by tenants, who have exercised their rights to collective enfranchisement before the LFRA 2024 comes into force. If some tenants in the block did not participate in the claim to enfranchise, the participating tenants will have had to fund the claim in relation to the non-participating flats, including any payment due in respect of marriage value. If when the Marriage Value Reform comes into force the tenant of a non-participating flat exercises a right to enfranchise, they will not have to pay marriage value to the company, causing a loss to the tenants who originally participated in the collective enfranchisement. It is said that this involves an adjustment of marriage value in favour of one tenant at the expense of other tenants, rather than as between landlords and tenants as is the case in the general context for enfranchisement.
442. Mr. Loveday pointed out on behalf of the defendant that this issue was raised by the Law Commission in para.3.72 of its Valuation Report (No.387) and was answered at para.3.91. Mr. Jourdan accepted that this issue does not go to any of the DoIs we are asked to grant. It is inherent in reform of this kind that differences will arise between the position of those who exercised their right of enfranchisement before a reform and those who exercised it after, and tenants who exercised their right of collective enfranchisement before the LFRA 2024 and assumed the status of landlords ran the risk that the position of non-participating tenants might be improved by subsequent legislation in the same way that other landlords did. The argument that the effect of legislation which permitted some form of collective enfranchisement was to “freeze” the law in its existing iteration to avoid differences in the position of participating and non-participating tenants is not a realistic one. We do not consider this point takes matters any further.

Whether the objects which the Marriage Value Reform was intended to achieve could have been achieved by a less intrusive measure

443. As we have said in our earlier section dealing with legal principles, the central question is not whether less intrusive measures *could* have been adopted, or whether the state can prove that its legitimate aim could not have been achieved without its chosen measure. Rather, it is whether in adopting its measure and striking the balance it did, the legislature acted within its margin of appreciation.
444. First, the claimants suggested that the benefit of the Marriage Value Reform should have been restricted to certain classes of leaseholds (see the examples in other legislation set out in para.86 of Mr. Jourdan’s skeleton), in particular owner-occupiers or persons unable to afford levels of compensation under the pre-existing code, or to exclude commercial investors. However, as we have explained, the aim of the Reform was to remedy the systemic imbalance and unfairness in the relationship between all landlords and all tenants resulting from the wasting asset problem. The claimants’ suggestions would not achieve the aim of the legislation.
445. Alternatively, it has been suggested that “differential pricing” of the compensation payable to landlords could distinguish between more and less deserving tenants. This technique would mean that tenants judged to be less deserving would benefit from a reduction in the amount of marriage value payable, rather than a complete exclusion of marriage value. By definition that would not achieve the aim of removing the whole of the imbalance attributable to the wasting asset problem in all cases.
446. Accordingly, these two alternatives do not qualify as relevant “less intrusive measures” since they would not achieve fundamental aims of the reform.
447. Further, these alternatives both depend upon an ability to define distinct categories in legislation which would work satisfactorily in practice. These issues were considered carefully by the Law Commission in its Valuation Report. It accepted that it would not be impossible to draw up legislation to define categories of tenants for different treatment. But the Law Commission concluded that there would be difficulties: for example, in defining and justifying the distinctions, anomalies, distortions in the market (including effects on marketability) and unintended consequences.
448. The briefing to Ministers and the IA took the same approach. It was decided that the Marriage Value Reform should apply across the board. We consider that that decision lay well within the legislature’s margin of appreciation.
449. The wasting asset problem may be thought to be particularly acute for resident occupiers, but even so tenants falling within that category come in all shapes and sizes. The problem is also severe for small investors who invest in dwellings, for example, for their retirement. Could a category of small investors be satisfactorily defined: by reference to the number of properties held (1, 2, 5, ...) or by reference to total capital value? If the reforms had been made to apply to only certain categories of tenant, their landlords would complain that they would suffer a loss in value, but not other landlords with potential knock-on effects in the market for freehold or leasehold property dependent on the attributes of the current or a prospective tenant. Tenants who did not benefit from the reforms would also complain about their differential treatment. There is no escaping the simple point that the wasting asset problem applies to all leaseholds

falling within the enfranchisement code and thus to all landlords and tenants in relation to those leaseholds.

450. A further justification, although not a central one, for the Marriage Value Reform was the complexity of the valuation process for determining that value, in particular the need to apply a relativity factor (used to arrive at a value of the leasehold without the benefit of a right to enfranchise). The Lands Tribunal and its successor the Lands Chamber have been troubled by this subject on many occasions over the years, but there is no need for us to delve into its technicalities. Mr. Jourdan submitted that one solution would be for the defendant to make a statutory instrument prescribing the relativity to be used in assessments of marriage value. This, too, the Law Commission considered in its reports with care and at some length. They referred to the arbitrariness of making a deduction for the benefit of an enfranchisement right given the paucity and age of the evidence available (e.g. para.14.61 of the Consultation Paper). Plainly, the prescription of relativity rates would simplify the process for valuing marriage value in each claim, but the lack of evidence would still affect the determination of prescribed values. However, even assuming prescription to be feasible, that would not enable the central aims justifying the removal of marriage value from enfranchisement compensation to be achieved.
451. Mr. Maurici submitted that the Government and Parliament failed to consider introducing a “grandfathering clause” in relation to the Marriage Value Reform, or to give reasons for not pursuing that alternative. Mr. Moules KC produced a note showing that the matter was debated twice in the House of Lords. On one occasion the relevant amendment was not moved and on the other it was withdrawn. On the first occasion, Baroness Scott (Parliamentary Under Secretary of State at the Department of Levelling Up, Housing and Communities) observed that the amendments were “directly counter to our objective. In particular, they would prevent us from helping the trapped leaseholder – that is a leaseholder with a short lease who is unable to afford to extend because of the prohibitive marriage value payable, and so is trapped with an asset of diminishing value” and “would also further complicate an already complex system”, creating “a new two-tier system with different rules for leases that were under 80 years at the time of the Act and those that fell under 80 years thereafter” (HL Deb 24 April 2024, Vol 837 cols.501-502). On the second occasion, Lord Gascoigne, speaking for the Government stated that “these amendments would leave some leaseholders with wasting assets from which there is no escape” (HL Deb 24 May 2024 Vol 838 cols.1336-1344). In the light of this Parliamentary consideration, this issue was not pursued further before us.
452. We deal with the suggestion that an exception should have been made to exclude charities from the Marriage Value Reform and the two other measures in the LFRA 2024 under Issue 14 below.

The “fair balance” assessment

453. We take into account our previous reasoning and conclusions in this section of the judgment without seeking to summarise all of that material.
454. Compensation terms are relevant to the assessment of whether the contested measure respects the requisite fair balance and does not impose a disproportionate balance on landlords. The key issue in the striking of the fair balance is whether the removal of

marriage value from enfranchisement compensation, with or without other measures of the LFRA 2024, results in compensation which is not “reasonably related” to a landlord’s freehold reversion of which he is being deprived.

455. The enfranchisement valuation code and the LFRA 2024 contain general socio-economic measures in the public interest and, although they are applied in due course to individual properties, the measures themselves are not to be treated as “distinct expropriations” (see *Scordino v Italy (No. 1)* at [97]-[98] and *James* at [154]). Promoting economic, social or political reform may justify a substantial departure from full compensation.
456. The scope and degree of importance of the public interest, here the imbalance in the landlord and tenant relationship to be addressed, is to be weighed against the nature and measure of the compensation to be provided (*Urbárska* at [126] and *SRM* at [56]).
457. In *James* the ECtHR accepted in relation to the original enfranchisement code under the LRA 1967 that it sufficed that a landlord would receive compensation for the value of his *investment* in the *ground*, although that excluded merger value in relation to that asset [56]. Here, the Marriage Value Reform will leave intact the landlord’s entitlement to the investment value of his interest in the *ground and dwelling* after excluding marriage value.
458. The issues relating to the reform were considered at great length and in detail by the Law Commission, officials and Ministers. They were also the subject of consultation, a process of engagement with stakeholders such as the claimants and debate in Parliament (with access to the earlier reports and IA). For the reasons given above, we remain of the view that a wide margin of appreciation should be given to the approach taken in the LFRA 2024.
459. Parliament was justified in treating the imbalance and unfairness in all long leasehold relationships where in practice residential property is bought for a substantial premium as a matter which needed to be remedied. The Marriage Value Reform is justified because marriage value arises during the term of a lease (and even then for part only of that term) as a result of the wasting asset problem and the imbalance it creates. Given that the right to enfranchise is intended to remedy that problem, it would be illogical and unfair for the code to require a tenant to pay any part of that value to his landlord. The assessment of the fair balance was not flawed because the Government misunderstood case law or any other relevant legal principles.
460. For these reasons it follows that the parties’ estimates of the scale of the effect of the Marriage Value Reform on landlords and tenants, whether viewed globally or for individual transactions, is not a significant factor weighing against the making of the Marriage Value Reform. Essentially those estimates have simply quantified the scale of the marriage value issue which results from the wasting asset problem and which needs to be rectified as enacted in the LFRA 2024.
461. Likewise, it is incorrect for the claimants to say that the Marriage Value Reform is untargeted or improperly targeted. It is a structural measure aimed at remedying a problem affecting all leaseholds, irrespective of whether the tenant resides in his dwelling or is a small, or indeed large, investor or is based overseas. For the same

reasons, the alternative measures which have been suggested do not qualify as relevant “less intrusive measures”. They would not achieve the aim of the Reform.

462. Even allowing for the effect of errors which have been accepted by the defendant, the IA provided to Parliament was adequate for the purposes of assessing the issues raised by A1P1 within the parameters given. In addition, the court has the benefit of the Addendum IA and the additional data and numerical analysis relied upon by the claimants. We have had regard to all of that material.
463. Bearing in mind that the Marriage Value Reform is a general social measure rather than a distinct expropriation, it is appropriate for us to consider the economic effects of that measure (and other measures) upon landlords and tenants as a whole and likewise the claimants. But we also bear in mind that the movement of marriage value away from the claimants (and others in a similar position) in favour of tenants will be large because of the numbers of properties in their portfolios and, in some instances, the high values of properties in London. We also take into account the evidence provided by the claimants on the effect of the Marriage Value Reform (including immediate effects) on the value of their interests and the management of their estates. We also note that whereas Abacus provided a total value of their portfolio with which their claimed loss can be compared, not all claimants did the same.
464. It is also relevant to consider the effect of the Marriage Value Reform at the level of individual transactions. For example, the Addendum IA suggests that the average increase in value for leases in England with 80 years or less to run is of the order of £18,000 or 6-7%. Estimates have also been provided for average annual costs per lease for landlords. We also bear in mind issues raised by the claimants as to the accuracy of certain of the defendant’s figures.
465. Taking into account all the material before the court, we accept the defendant’s submission that these effects on landlords, whether taken individually or globally, are clearly and substantially outweighed by the effects of the wasting asset problem, the consequent unfairness of tenants having to pay to their landlords part of the marriage value resulting from that socio-economic problem and the need for the Marriage Value Reform as a remedy across the board. Transfers of an extended leasehold or freehold interest from landlord investors to tenant investors without payment of marriage value are not objectionable under A1P1 given the strong social and economic justification for that Reform.
466. Our conclusion takes into account the fact that a landlord will remain entitled to the investment value of his interest in the land *and* dwelling, that is the term value (subject to the Ground Rent Cap where the rent is onerous) and reversion value, after excluding marriage value (and hope value). That does represent the open market value of the landlord’s interest as if the wasting asset granted by the landlord, the lease, had run to its end, or he had sold his interest in the market to a third party. In addition to the premium paid on the grant of the lease and all the other lease costs borne subsequently, the tenant will still have to bear that enfranchisement price and his own professional fees, although those costs may be offset by any marriage value from which he benefits. That is the tenant’s contribution to dealing with the wasting asset problem. The overall distribution of costs between landlord and tenant reflects the compulsion the tenant is under to enfranchise in order to prevent his asset becoming unmarketable and eventually having no value. Accordingly, we conclude that the Marriage Value Reform

does not require a landlord to bear the sole burden, or an excessive burden, of dealing with the wasting asset problem.

467. The solution adopted by the Marriage Value Reform for excluding marriage value involves a statutory assumption that the enfranchising tenant (or other relevant party) is not seeking and will never seek to acquire the freehold reversion (or other relevant interest). That approach to defining market value is consistent with the observations of Lord Walker in *Sportelli* at [34] (see [187] above). It is also compatible with the changes from time to time in Parliament's directions on market value assumptions in legislation dealing with compensation for compulsory purchase which, as a distinct expropriation, must normally satisfy a higher standard in order to be reasonably related to the value of the property, namely "full compensation" (see [107] and [179]-[182] above).
468. For all these reasons we conclude that with the Marriage Value Reform in place, the premium payable to a landlord for enfranchisement represents compensation which, for the purposes of A1P1, is reasonably related to the market value of the interest that is the subject of the deprivation. The legislation strikes a fair, proportionate balance.

The submissions of John Lyon's Charity on the Marriage Value Reform

469. John Lyon's Charity makes the same submissions as the other claimants in relation to the removal of marriage value from the landlord's compensation, but argues that those submissions have particular force because of the nature of its freehold portfolio:
- i) The freeholds are located in St John's Wood in PCL;
 - ii) It submits that the tenants of its St John's Wood Estate are likely to include a greater proportion of wealthier tenants and overseas tenants than the national average, an assertion which we find inherently persuasive in qualitative terms;
 - iii) It submits that there is a particularly high number of tenants of its freeholds for whom the relevant leasehold is not their only property, with an estimate of 40% overall, and 50% of those with 80 years or less left to run. We accept that there are grounds for supposing that a significant proportion of the leaseholds from John Lyon's Charity are held by tenants for whom this is not their only property. However, the title review conducted by John Lyon's Charity to arrive at those figures does not readily provide a basis for distinguishing between tenants with more than one home but who are not engaged in the business of letting, or leaseholds owned by a company but used residentially by the ultimate beneficial owners of the company, and leaseholds where the property is let commercially;
 - iv) It submits that there is a particular preponderance of leasehold properties in its freehold portfolio which were acquired by the current tenants with less than 80 years remaining on the lease, and seeks to infer that a buyer of such a lease will be likely to have a good understanding of the rights of enfranchisement. We are willing to assume this may well be the case.
470. However, we are unable to accept that these features of the freehold portfolio of John Lyon's Charity affect the conclusions we have reached as to the legitimacy of the objects of the LFRA 2024 for A1P1 purposes, (which do not depend on distinctions between different types of tenants), and as to the proportionality of removing marriage

value as a means of achieving that object (which reflects features intrinsic to the concept of the lease as a wasting asset and to the concept of marriage value to which we have referred). Nor does the fact, if it is the case, that John Lyon's Charity currently comprises a significant proportion of properties which, if subject to enfranchisement under the current regime, would involve the payment of marriage value affect our conclusions on the challenge to the removal of marriage value. The objects of the LFRA 2024, and the view which we have held that Parliament was entitled to reach that the removal of marriage value was an appropriate means of achieving those objects, while still ensuring fair compensation to landlords, are not altered by the profile of any particular freehold portfolio.

Conclusion

471. For all the reasons we have given, we reject the proportionality challenge to the Marriage Value Reform. In summary, there is a robust justification for the Reform which is logically connected to the aims of the legislation, in particular remedying the wasting asset problem and unfairness and imbalance in the relationship between all landlords and tenants falling within the enfranchisement code. There are no less intrusive measures for meeting the aims of the legislation which ought to have been adopted. The Reform does not result in an excessive burden being placed on landlords. A landlord will receive compensation which is reasonably related to the market value of the interest of which he is deprived. A fair and proportionate balance has been struck. The Reform falls within the margin of appreciation that should be accorded to Parliament.

12. The Costs Recovery Reform

472. Mr Jourdan led on the challenge to the reform in the LFRA 2024 removing the entitlement of a landlord to payment of his non-litigation costs. The other claimants adopted his submissions.
473. In this context, litigation costs are the costs relating to a dispute about an enfranchisement claim incurred in proceedings before a court or tribunal. A landlord's non-litigation costs relate to such matters as investigating whether a tenant is entitled to make a claim to enfranchise, preparing information relevant to the assessment of the compensation payable and obtaining a valuer's report, negotiations with the tenant's representatives and conveyancing costs. Under the pre-existing code a person making an enfranchisement claim has been obliged to pay his landlord's non-litigation costs, whether the claim related to a house or a flat, the acquisition of the freehold or a lease extension (see e.g. s.9(4) of the LRA 1967 and ss.33 and 60 of the LRHUDA 1993).
474. Section 38 of the LFRA 2024 inserts into the LRA 1967 a new code for non-litigation costs relating to claims under that Act. Section 39 of the LFRA 2024 inserts into the LRHUDA 1993 a new non-litigation costs code for claims under that Act. The general principle is that a claimant tenant is no longer liable to pay his landlord's non-litigation costs. The new provisions lay down three exceptions to that principle summarised in [76] above.

Aims and justification

475. The Law Commission addressed the obligation of tenants to pay non-litigation costs in chapter 13 of its Consultation Paper. Tenant consultees criticised the amounts they had been required to pay and their unpredictability. The risk of having to pay such costs as well as compensation could encourage tenants to accept terms at an early stage, despite issues as to the reasonableness of the amounts involved. There were also concerns about the costs that would be incurred in challenging a cost bill. Such costs may be uneconomic. A landlord may have greater financial resources and therefore be in a stronger negotiating position (paras.13.35 to 13.36).
476. At that stage the Law Commission did not put forward a proposal for reform as it considered the arguments for and against any reform to be finely balanced (paras.13.49 to 13.54). Instead, the Law Commission put forward suggestions as to how landlords' costs could be controlled should tenants continue to be liable for those costs, such as fixed costs and capping.
477. In chapter 12 of its Enfranchisement Report (No.392), the Law Commission returned to this subject which it considered in detail. After summarising the views of consultees, the Law Commission put forward its views on reform (para.12.27 *et seq*). It noted that parties to an open market transaction normally pay their own transaction costs. Neither party expects to be paid any part of those costs by the other. The price agreed in the open market will reflect the practice that each party pays its own costs [12.27]. The compensation payable under the enfranchisement code is based on market values which do not take account of the code's requirement that the tenant should also pay the landlord's non-litigation costs. Accordingly, the landlord is over-compensated [12.28]. If the tenant's statutory liability to pay the landlord's costs were to be removed, the landlord's compensation would still be based on market value, which would already have factored in an allowance for transaction costs [12.29].
478. The Law Commission acknowledged the point made by landlords that enfranchisement involves a compulsory purchase of the landlord's interest at a time which is not of his choosing, and which may be when the market is weak. Landlords contended that there is an analogy to be drawn with the legal rules for a compulsory purchase under UK law which require an acquiring authority to pay a landowner's costs [12.30].
479. However, the Law Commission concluded that the compulsion on a landlord to sell in an enfranchisement claim was insufficient to justify a legal requirement for a tenant to pay the landlord's non-litigation costs. A tenant is under some compulsion to seek enfranchisement in order to prevent the expiration of his time-limited asset. As the lease becomes shorter the cost of enfranchisement is likely to increase. The term remaining may be unmortgageable or otherwise difficult to sell. "An enfranchising tenant leaseholder is therefore acting with a degree of compulsion that is inherent in the nature of the leasehold interest that he or she holds" [12.31]. It is not an answer to say that a tenant chooses to buy a lease. Often a tenant would have had little or no choice as to the form of tenure available when he bought the property in the first place, as in the case of flats or maisonettes [12.32]. Landlords are aware of the compulsion operating on tenants and know that they are able to exercise enfranchisement rights at any stage. "Indeed, many landlords purchase freeholds and other reversionary interests because of the prospect that a leaseholder will decide to seek a lease extension (and pay a price to the landlord for doing so) sooner rather than later" [12.33].

480. The Law Commission recommended that if landlords should continue to receive a price for a lease extension or freehold referable to the open market value of the landlord's asset, tenants should not be required to make any contribution to their landlord's non-litigation costs [13.35]. But if it should be decided that the price for enfranchisement should not be calculated by reference to open-market value, then the existing obligation of a tenant to pay those costs should remain [12.36].
481. The Law Commission went on to consider exceptions to the costs reform they had recommended. They also addressed mechanisms such as fixed costs and costs-capping in order to control the level of a landlord's non-litigation costs, should it be decided that compensation should not relate to open market value.
482. The IA estimated that a requirement for landlords to pay their own non-litigation costs would cost landlords, and save tenants, £599m, split between £222m for business tenants and £377m for non-business tenants. The derivation of those figures is explained in Annex 2 to the IA. The IA considered that the Cost Recovery Reform would incentivise landlords to reduce their own costs, for example, through improved efficiency as well as the increased transparency and simplicity of the code which would follow from the reforms effected by the LFRA 2024.
483. With regard to the aims and justification of the Costs Recovery Reform, the IA followed the approach of the Law Commission (para.36 and Annex 2 para.18). The reform would reduce an imbalance between landlords and tenants. The former would have to pay their own non-litigation costs, as they would do if selling on the open market.
484. The ECHR Memorandum addressed the Costs Recovery Reform at [66]. The document stated that the new rules are compatible with A1P1 because they pursue the legitimate aims of addressing the historic imbalance between landlords and tenants, ensuring fairness for tenants and helping to make the enfranchisement process less complex and expensive. Removing the requirement for tenants to pay landlords' costs would remove a significant barrier to the bringing of enfranchisement claims, would encourage landlords to complete the process more quickly and efficiently and would incentivise landlords to reduce their own costs.
485. The submission to Ministers on non-litigation costs dated 13 December 2022 essentially endorsed the reasoning of the Law Commission in recommending this option.
486. The schedules of Hansard material agreed between the parties show that Parliament debated the issue regarding the recovery of non-litigation costs by landlords.

Fair balance assessment

487. In view of the reasoning set out above in relation to the Ground Rent Cap and the Marriage Value Reform, we can set out our views on this challenge more briefly. Given that the aims of this measure were for economic and social justice purposes common to the three reforms, and for the reasons set out above and in this part of the judgment, we remain of the view that a wide margin of appreciation is appropriate in the application of the A1P1 tests.
488. The approach taken by the Government and by Parliament accords with the Law Commission's recommendation. The reforms to the enfranchisement valuation code

provide compensation for the landlord based on market value. Plainly, they have not opted for a formula-based approach. The reversion value, which becomes an increasingly important component of the compensation as the length of the remaining term decreases, is an expression of market value which has not been altered by the LFRA 2024. The term value is also a market value. In many cases the 0.1% Ground Rent Cap will not be exceeded. But where the cap does apply in order to exclude the onerous or unfair element of a ground rent, we have concluded that the resultant term value is still reasonably related to open market value. The term value and reversion value components together represent the open market investment value of the landlord's asset. For the reasons we have given, the exclusion of marriage value, in response to the wasting asset problem, does not result in compensation which is not reasonably related to market value.

489. We do not accept Mr. Jourdan's submission that if a landlord has to pay his own non-litigation costs, then the compensation he will receive will be reduced by that amount and so he will receive less than the compensation due to him based on market value. We accept the approach taken by the Law Commission. Open market transactions ordinarily proceed on the basis that each party bears their own costs. That is the position where landlords buy freeholds from, or sell them to, each other (something which is clearly a very active market including for several of the claimants, as outlined at [41]-[46] above). A valuation based upon such comparable evidence, for example to arrive at a FVPV, involves the same assumption. So it follows that a vendor who pays his own costs does not receive less than open market value. On the other hand, if the purchaser were to pay the vendor's costs, he would be paying more than market value as ordinarily understood. We do not regard the evidence in the witness statements of Mr Spearman (filed on behalf of Abacus) on the practice followed in voluntary and statutory enfranchisement claims as undermining the approach taken by the Law Commission to open market value generally. In any event that approach lay within the broad discretion available to Parliament when deciding to adopt the recommendations of a specialist law reform body which had carefully investigated these issues (including through an extensive consultation process) and produced a fully-reasoned set of proposals.
490. We also do not accept Mr Jourdan's suggestion (para. 60 of his skeleton) that the Law Commission's analysis is inconsistent with the decision of the Lands Tribunal in *Sportelli* [2007] 1 EGLR 153 at [97]. Abacus did not explain how this decision could assist us on this point. It appears to us that the Tribunal rejected an attempt to arrive at the value of the landlord's freehold reversion using a deferment rate adjusted for transaction costs. In that context the Tribunal said: "since the statutory requirement is to arrive at 'the amount which... the interest might be expected to realise if sold on the open market', the requirement is to arrive at the price to be paid, not that price less deductions for the cost of sale." The Tribunal did not reject the view subsequently adopted by the Law Commission and by legislators, that open market value is ordinarily inclusive of transaction costs.
491. In any event, the Government and the legislature were entitled to consider whether there is a sufficient justification for requiring one party, the purchaser, to pay the transaction costs of the other, the vendor in the context of a transaction which arises from the inherent unfairness of the leasehold model of property ownership. This is the real issue. Here the claimants submit that the justification for the pre-LFRA 2024 cost rules lies in the fact that under the enfranchisement code, the landlord is compelled to sell his

interest (or to grant a lease extension out of his interest). The case is one of expropriation and said to be analogous to the compulsory acquisition of private land for a public project.

492. We have already cautioned against excessive reliance upon the analogy of UK compulsory purchase legislation in the present context. So far as the compulsory purchase code is concerned, the Compulsory Purchase Act 1965 sets out the methods by which land may be acquired under a compulsory purchase order which has been authorised under the Acquisition of Land Act 1981. Valuation of acquired land is dealt with separately under the Land Compensation Act 1961.
493. Section 23 of the 1965 Act provides that the conveyancing costs in relation to the compulsory purchase of such land must be borne by the acquiring authority. In *London County Council v Tobin* [1959] 1 WLR 354 the Court of Appeal held that professional fees and costs incurred in the preparation of a compensation claim for compulsory acquisition prior to the making of a reference to the Tribunal were recoverable as a head of compensation. In *Lee v Minister of Transport* [1966] 1 QB 111 the Court of Appeal agreed with this outcome, not on the basis that the costs represented disturbance compensation for being dispossessed from the land, but because under rule (6) of s.5 of the 1961 Act the costs were an “other matter not directly based on the value of the land”.
494. However, it does not follow that simply because enfranchisement involves a deprivation of the landlord’s reversion, the same approach on costs should be applied. In each instance these are matters of legislative policy for Parliament in the context of the principles governing A1P1. Here the defendant has put forward a robust justification for removing the tenant’s obligation to pay the landlord’s non-litigation costs on an enfranchisement claim.
495. Typically a compulsory purchase order is a measure obtained by a public authority dedicated to carrying out a specific project in a particular location in the public interest. The acquiring authority need not have any pre-existing interest in the land to be acquired or be in a property relationship with the landowner. It is an example of distinct expropriation, or a micro-economic setting, where close to full market value is normally required to be paid in order to be compliant with A1P1.
496. By contrast the enfranchisement code has broad social and economic objectives for the regulation of the private rights of landlords and tenants who are in an existing legal relationship, which they, or their predecessors in title will have created for the purpose of exploiting the economic possibilities offered by the original undivided property interest. The code imposes an obligation on the landlord to sell, but the tenant is also under compulsion to exercise his right to enfranchise in order to protect his asset, whether imminently or in the medium or longer term. The tenant is in this position because of the wasting asset problem that was created by the grant of the lease. By contrast a landlord has a permanent asset which during the course of the lease increases in value. Enfranchisement legislation is simply a general measure responding to the imbalance in the relationship. There is no distinct expropriation, such as a scheme or project.
497. Mr Jourdan submitted that an acquiring authority which has obtained authority to make a compulsory purchase is also under compulsion. For this proposition he relied upon the *Raja* case in which it was held that “the urgent necessity of the purchaser to buy”

as well as “the disinclination of the vendor to part with his land” must equally be disregarded: “neither must be considered as acting under compulsion.” But that is simply a description of the hypothetical transaction which has to be assumed between a willing vendor and a willing purchaser for the purposes of arriving at compensation in a compulsory purchase. The Privy Council was not suggesting that in all cases of compulsory purchase an acquiring authority promotes a project in the public interest because it is *compelled* to do so (still less to do so because of the challenges of a wasting asset). The dictum in *Raja* does not describe a situation which is analogous to the situation in which all tenants of leaseholds are placed. Irrespective of whether a tenant would wish to incur the cost of enfranchisement, he is compelled to do so in order to resolve the wasting asset problem. It is not suggested that public authorities acquiring land compulsorily face that issue.

498. Mr Jourdan pointed out that some of a landlord’s non-litigation costs, such as the costs of investigating whether a claim is valid and obtaining a statutory valuation, are incurred solely because of an enfranchisement claim and would not be incurred in a normal open market transaction. To that extent he says that those costs are not reflected in open market values. That may be so, just as there may be costs involved in some open-market transactions between parties who are not in the pre-existing relationship of landlord and tenant which are not replicated in enfranchisement transactions (for example the costs of determining the commercial merit of transacting with that counterparty on particular terms at a particular time as against other alternatives, or in seeking internal approvals for the decision to transact). But that does not mean that the Costs Recovery Reform treats landlords unfairly. For the reasons set out above, the reform is justified as part of the rectification of the imbalance in the landlord and tenant relationship created by long leaseholds of dwellings. Each party, landlord and tenant, has to bear their own non-litigation costs, including costs which are solely related to enfranchisement, as part of that remedial social measure.
499. We have referred to the estimate of the total aggregated amount of non-litigation costs which landlords will no longer receive as a result of the LFRA 2024. Certain of the claimants have also estimated the losses that they would incur individually from the Costs Recovery Reform. Mr Spearman says that the average non-litigation costs per transaction which Abacus would no longer be able to recover amounts to about £3,500 for legal and valuation fees. He accepts that, as we would expect, that figure would reduce with the simplifying measures introduced by the LFRA 2024. It seems to us that expenditure of this order would not represent an excessive burden for landlords, bearing in mind also that tenants will continue to be responsible for their own costs. It is significant in considering the fairness of the balance struck by the Costs Recovery Reform that the costs burden is shared between landlord and tenant, with many landlords benefiting from the economies of scale and greater leverage which follow from being a “repeat participant” in a particular type of transaction. We also note that in para. 83 of her first witness statement filed on behalf of Grosvenor that Ms Paul accepts that the requirement for landlords to bear their own non-litigation costs may not be significant taken by itself.
500. But in para. 55 of his skeleton Mr Jourdan also referred to cases where the value of the landlord’s interest will be so low that the compensation receivable would largely be swallowed up by the landlord’s own non-litigation costs. He referred to a lease for 999 years at an annual ground rent of £300. The term value (the capitalised value of the

rental stream) would only be of the order of £5000. Plainly he has chosen as an example a lease, the reversionary value of which is insignificant. Nevertheless, for low value claims the LFRA 2024 contains an exception to the new costs regime under which the tenant will have to pay that part of his landlord's costs which exceed the compensation awarded within a figure which has yet to be prescribed by regulations (see [76] above) – something which, together with the tenant's liability for his own costs, is likely to present a disincentive to enfranchisement in cases where the game is not worth the candle.

501. Next, Mr Jourdan submitted that there are alternative, less intrusive measures to the Costs Recovery Reform which would have achieved the objects of the LFRA 2024. Tenants could be liable to pay a fixed or capped contribution to non-litigation costs incurred by landlords. However, we consider that those alternatives would perpetuate the obligation of a tenant to pay his landlord's costs for addressing the wasting asset problem and so would not achieve the aim of remedying the imbalance between landlords and tenants. Alternatively, it lay well within the legislature's margin of appreciation to choose the reform as enacted in the LFRA 2024.

Conclusion

502. For all the reasons we have given, we reject the proportionality challenge to the Costs Recovery Reform. In summary, there is a robust justification for the reform which is logically connected to the aims of the legislation, in particular remedying the wasting asset problem and unfairness and imbalance in the relationship between all landlords and tenants falling within the enfranchisement code. There are no less intrusive measures for meeting the aims of the legislation which ought to have been adopted. The reform does not result in an excessive burden being placed on landlords. The overall result of the three reforms under challenge is that a landlord will receive compensation which is reasonably related to the market value of the interest of which he is deprived. A fair and proportionate balance has been struck. The Costs Recovery Reform falls within the margin of appreciation available to Parliament.

13. The cumulative effect of the measures

503. The claimants submit that the compatibility with A1P1 of the three measures under challenge must be judged in the context of all the statutory amendments since the LRA 1967 which have widened the scope of enfranchisement and its impacts on the property interests of landlords. We accept that in adjudicating on the claimants' A1P1 challenge, it is appropriate to step back and look at the cumulative effect of the various reforms to enfranchisement so far as the reversionary interests of landlords are concerned (see *Hutten-Czapska* [168] and [224]).
504. We have summarised the changes above. In his skeleton Mr Maurici describes the effect of the pre-LFRA 2024 legislation as involving an expansion from the "limited deprivation" considered by the ECtHR in *James* to a broad right to deprive landlords of their reversionary interests in most types of leasehold, regardless of whether the tenant lives in the property. That expansion, Mr Maurici submitted, has taken place on the basis that landlords received the open market value of their interests, that is reversion value, term value without a cap and, where it exists, a 50% share of marriage value. But Parliament has now legislated to reduce significantly the compensation payable for that expropriation.

505. Pausing there, and leaving to one side the original, more restricted valuation in the LRA 1967 which was considered in *James*, we note that there has been no complaint about the pre-existing level of compensation as representing open market value. Indeed, as we have seen, some investors have bought reversionary interests on a large scale in the expectation of receiving not only steady income streams from ground rents but also marriage value as well as term value and reversion value when claims for enfranchisement are made. It might be said that such investors have taken advantage of the opportunities presented by the enfranchisement regime.
506. Mr Maurici submits that the issue of whether the measures under challenge are compatible with A1P1 must also be looked at in conjunction with other provisions of the LFRA 2024 which widen the circumstances in which enfranchisement may take place whilst also curtailing landlords' rights and imposing upon them additional costs and losses. He referred to three such measures, whilst accepting that they are not themselves the subject of any incompatibility challenge.
507. First, the LFRA 2024 removed the two-year ownership requirement for the right to enfranchise, which the CLRA 2002 had introduced when removing the former residence requirement (see e.g. transcript for day 2 at pp. 319-321). In its Consultation Paper the Law Commission recorded at [2.25] that the two-year ownership requirement was to prevent the use of enfranchisement by investors for short term speculative gains (see also Lord Carnwath JSC in *Hosebay Limited v Day* [2012] UKSC 41; [2012] 1 WLR 2884 at [4]-[5]). Removing that ownership requirement will increase the number of claims to enfranchise.
508. Second, s.29 of the LFRA 2024 amends the exclusion of buildings in mixed use from collective enfranchisement by increasing the percentage of internal floor area of a building which may be occupied for non-residential purposes from 25% to 50%. It is said that this will both increase the number of collective enfranchisement claims and remove landlords' management control and frustrate or discourage development. The IA does not monetise this impact. Instead it simply acknowledges that "there could be some impact on investment in mixed-use development and new supply" (para.144), but adds that there will not be a "significant detrimental effect". C&G submits that that judgment is contradicted by evidence that "commercial property values on flagship shopping streets held by estates are 100% above values on proximate streets held in fragmented ownership" (Mr Roberts' report paras.125-126 and Mr Hunt's report paras. 3.16-3.18). Mr Roberts expects landlords to take defensive steps to limit the impact, but that would inevitably come at a cost. Mr Maurici submits that the failure to estimate those costs weakens the IA.
509. Third, s.32 of the LFRA 2024 makes it mandatory for a landlord to accept leasebacks for 999 years of units held by tenants who do not participate in a collective enfranchisement of a block of flats. It is said that, like the new 50% non-residential limit, this provision will remove management control from landlords and frustrate development opportunities for long-term investors (Mr Roberts' report para. 16). While the IA acknowledges a concern that mandatory leasebacks could reduce investment and represent a further loss of value, it asserts that a leaseback "is a valuable interest" ([149]). But the claimants complain that the IA does not assess the value of that leaseback as against the value lost to the landlord. The claimants also say that the 50% limit and/or mandatory leasebacks would not need to have a significant impact on

landlords for their additional costs to more than offset the £90.9m of net benefits that the IA estimates will be generated by the LFRA 2024 over ten years.

510. The claimants submit that viewed overall the package of reforms will cause landlords to bear a burden which is too heavy for the balance to be fair. As Mr Maurici put it, those measures are “the heavy straw that broke the camel’s back”.
511. We have already given our reasons for concluding that the three measures under challenge do strike a fair balance for the purposes of A1P1. As Mr Moules submitted, the IA did consider the reforms introduced by the LFRA 2024 cumulatively and explained why it was judged that the effect of certain reforms could not be monetised. The additional non-monetised reforms referred to by the claimants were addressed by the IA. In this regard it is important to note the distinct questions which the three challenged reforms tackled, and the means adopted for tackling them:
- i) The Ground Rent Cap addressed the effect of onerous ground rents on the right to enfranchise, against a background of evidence of more recent market developments creating ground rents as a marketable income stream, concern that no or no sufficient value was provided in return for higher ground rents, and evidence of their adverse impact on saleability and marketability. We concluded that the use of capped ground rents in the Term element of the enfranchisement premium did not prevent the resultant calculation from being reasonably related to market value;
 - ii) The Marriage Value Reform removed an element from the enfranchisement premium which arose from the inherent unfairness of the leasehold model of property ownership and the inherent imbalance which followed from the “wasting nature” of the tenant’s interest. This did not represent a value which the landlord could have realised on a sale to a third party or if the lease ran its full course. Its removal did not have the effect that the resultant premium was not reasonably related to the market value of the landlord’s reversionary interest;
 - iii) The Costs Recovery Reform did not affect the enfranchisement premium, but whether the tenant should have to pay the landlord’s costs of the acquisition. We have concluded that in requiring the tenant and the landlord each to pay their own costs of a transaction which is in a meaningful sense involuntary for both parties, as would happen if the landlord were to sell its right to the ground rent income stream and right to FVPV on the expiry of the lease, the LFRA 2024 struck a fair balance, and that this balance did not have the effect that the landlord would cease to receive payment reasonably related to market value.
512. Having concluded that each of the three reforms represented a fair and proportionate means of addressing different aspects of the unfairness inherent in the leasehold model of property ownership, and that none had the effect that the particular element of the total amount payable to a landlord on enfranchisement ceased to be reasonably related to market value, we are satisfied that the claimants are no better placed by asking the court to consider the cumulative effects of the three measures in A1P1 terms than in considering them in isolation.
513. What of the additional matters relied upon?

514. In relation to the removal of the two-year ownership requirement, at [116] the IA stated that this provision had not achieved its intended purpose. The requirement could be avoided, yet it remained an obstacle for an original residential tenant wishing to enfranchise. No doubt the authors had in mind the considered views of the Law Commission. In its Consultation Paper the Commission set out criticisms at [7.118] *et seq.* That consultation exercise only served to reinforce the Law Commission's provisional view that the 2-year ownership requirement should be repealed. Their detailed discussion included the following at [122]:

“Around 450 consultees – a notably high number compared to the average of around 300 who responded to each question in this chapter – answered this question, almost all of whom agreed with our position of removing the two-year ownership requirement. Consultees supported our suggestions that the requirement is easily avoided, that it causes delays and complications for leaseholders.”

The Law Commission added at para. 6.128:

“For sophisticated commercial investors, the ownership requirement is easy to avoid; for ordinary leaseholders, it can comprise a serious obstacle to exercising enfranchisement rights, often by being responsible for the premium increasing over the two-year period. These points have been confirmed to us both by consultees and by our advisory groups.”

515. We do not accept that a “fine-tuning” of the detailed elements of the enfranchisement process of this kind, to address a feature of the existing regime which had been found to do more harm than good, materially increases the burden placed by enfranchisement on landlords, and, to the extent that it does so, the Law Commission identified a sufficient justification for it which it was manifestly within Parliament's margin of appreciation to adopt.
516. In relation to the 50% non-residential ceiling the reasoning in [144] – [146] of the IA was rather more extensive than the claimants' submissions suggested:

“143. There are also some costs to freeholders that we haven't been able to monetise. Freeholders of mixed-use buildings with over 25% up to 50% non-residential floorspace usage will potentially be subject to collective enfranchisement and right to manage claims where under existing legislation they could not have been. Freeholders argue the potential for claims will make investment more expensive and discourage redevelopment of mixed-use spaces such as high streets, representing an associated depreciation in the value of existing assets in such spaces. Freeholders also argue a successful claim may result in several costs. Freeholders argue that a successful collective enfranchisement claim of such a building will negatively impact on the value of other adjacent properties in areas such as high streets and mixed-use developments, where single ownership of multiple adjacent mixed-use properties is common. They argue

the inability to manage a contiguous portfolio will negatively impact the value of any remaining properties. They argue this fragmented ownership will also discourage future redevelopment and investment and make it more expensive with associated valuation implications.

144. While it is accepted there could be some impact on investment in mixed-use development and new supply, and the data in this space is limited, the Government is not convinced that an increase of the non-residential limit to 50% will lead to a significant detrimental effect on investment in mixed-use buildings and developments, including for regeneration. Decisions on the form of new or regenerative development will be affected by many factors of which the non-residential limit is one. Additionally, by an amendment made by the Commonhold and Leasehold Reform Act 2002, the non-residential limit for collective acquisition has been raised before, from 10% to 25%, and similar concerns were raised at that time, but investment in mixed-use buildings up to 25% non-residential floorspace has continued. Housing supply had continued to increase to the highest level in 2019-20, the highest in over 30 years, despite the previous change and most of these have been built by private providers for market sale.

145. Moreover, successful leaseholder-led management of mixed-use buildings already takes place in mixed-use buildings with up to 25% non-residential floorspace, and building maintenance and management may also be of higher standard if the responsibility lies with leaseholders who are likely to be more invested in it, given that they live there and own properties in the building. Appropriate safeguards for landlords to act against poor management of the building are also in place where the leaseholders take up their right to manage and freeholders will continue to enjoy protection where a building can reasonably be described as substantively non-residential.

146. The government's view is that increasing the non-residential threshold is a proportionate change that will broaden access to collective enfranchisement and the right to manage for leaseholders, giving them more choice and control over the management of their building, and that the significant benefit to leaseholders outweighs the potential concerns. Where there are viability concerns with a development, there will be a range of options developers can explore to adapt or re-design their proposals. Many new purely residential buildings and mixed-use buildings are being built where leaseholders have the right to enfranchise and the right to manage and this has not deterred investment overall."

517. In this regard the IA adopted the fully-reasoned conclusions of the Law Commission in the Enfranchisement Report at [6.317] *et seq* and following, which reported on the significantly high levels of dissatisfaction expressed about the 25% limit in the

consultation process, and their decision that the right to collective enfranchisement should be approached by reference to the question of whether a building was “predominantly residential” which they concluded was fairly defined by reference to a 50% test. A 50% limit was also the outcome of the Government consultation reported in the Commonhold Response, [2.16] which stated, “we believe a 50% limit provides a more accurate measure than a 25% limit of whether a building is residential” and “strikes a fairer balance.”

518. In relation to mandatory leasebacks paras. 149 and 152 of the IA stated:

“149. Freeholders have also argued that the use of a mandatory leaseback as part of a successful collective enfranchisement claim could represent a significant loss to them. They argue they will be required to exchange a freehold interest for a less valuable leasehold interest. They argue that they will be unable to realise redevelopment opportunities for such units without freehold ownership of the wider building, making the leaseback less valuable than the freehold interest they lost. They argue that commercial units will be less attractive to commercial tenants if they only own them on a leasehold basis as an intermediate landlord. Commercial tenants will want assurance that the wider building will be maintained to an acceptable standard and faults dealt with swiftly, something they will not be able to guarantee without freehold ownership of the wider building. They argue that this loss in value will be exacerbated if leaseholders are unable to successfully manage these buildings following the transfer of freehold ownership. For the above reasons, freeholders argue that mandatory leasebacks will discourage redevelopment and investment in mixed-use buildings and spaces in the same way as increasing the non-residential limit to 50%. Whilst we acknowledge this concern, we note that the Law Commission stated, ‘a 999-year leaseback is a valuable interest [...] [and] virtually the whole of the value of the relevant part of the premises remains with the landlord’.

152. We do not expect freeholders will exit the market as following our reforms; many freeholders will continue to hold a valuable long-term interest in leasehold buildings, including from the receipt of ground rent where permitted and premiums from lease extensions. While we are making it easier and cheaper for leaseholders to acquire their freehold, and this may displace freeholders of some buildings, it is possible that freeholders [subject to collective enfranchisement] might expect to hold 999-year leasebacks over flats not participating in the enfranchisement. They would then continue to receive income from a share of the premium in the event they decided to extend their leases. ...”

Given that landlords had contended that the 50% non-residential ceiling and mandatory leaseback reforms would give rise to similar adverse effects, these paragraphs should be read together with [143] – [146] of the IA.

519. Once again, the IA adopted the carefully reasoned proposals of the Law Commission in its Enfranchisement Report [5.154]-[5.155], on the basis that this would render collective enfranchisement more achievable while ensuring fairness to landlords in the form of a valuable 999-year lease for non-participating flats.
520. We consider that the Government and legislature were entitled to proceed on the basis of those assessments which represented adjustments to the existing collective enfranchisement scheme derived from practical experience of its operation, for which careful and persuasive justifications were offered. Further, we note that these measures were aimed at removing obstacles to freehold enfranchisement in multi-tenanted buildings. If, as we have concluded, the terms on which the transfer of freeholds or grants of extended leaseholds by landlords will now take place are A1P1 compliant as a means of addressing the inherent unfairness of leasehold as a model of property ownership and the resultant imbalance of power in the landlord-tenant relationship, then we do not see how the removal of obstacles to tenants exercising those (*ex hypothesi*) A1P1-compliant rights of enfranchisement can have the effect of rendering the scheme incompatible with A1P1.
521. In summary, even taking into account these additional measures, we remain of the view that the three measures under challenge are compatible with A1P1. The claimants' cumulative challenge does not affect our conclusion that the measures represent a proportionate remedial response to the imbalance between landlords and tenants for all enfranchisable leaseholds and to the wasting asset problem.

14. Whether the non-exclusion of charities from the measures violates A1P1?

Introduction

522. This challenge to the LFRA 2024 was principally advanced by John Lyon's Charity, and focussed on the appreciable effect which the abolition of marriage value would have on its income derived from enfranchisements of its freehold property portfolio largely concentrated in the St Johns Wood area of London, and a consequential reduction in its ability to support a range of worthwhile causes, which have a particular emphasis on the provision of support in the child and young people sector.
523. The argument was supported by the Portal Trust, a leading educational grant provider. It is the freeholder of a large estate in Hackney in London, and some 13% of its income derives from rents received from SHA, which leases a substantial volume of residential property from the Portal Trust on the Hackney Estate pursuant to the terms of two leases. We address the specific circumstances of the Portal Trust in more detail below. For present purposes, it is sufficient to note its submission that the effect of the LFRA 2024 will be to reduce its income and the amounts available for its charitable purposes.
524. John Lyon's Charity has a diverse asset base, valued in total at £385,633,000. The majority of its assets are said to be permanently endowed. On its evidence, it operates on a "total returns" policy which involves spending 3.5% (an assumed sustainable return on assets over time) of the value of its assets each year. Assets in the form of freehold interest in property comprised 10% of total assets in 2023/2024. Of this amount, £10.5m represents assumed marriage value, and 25% assumed enfranchisement premiums. Income from enfranchisement, in 2023/2024 was nearly a quarter of total annual income, and income from marriage value 10%. The charity has

estimated (it says conservatively) a reduction in its annual grant-making ability of £1.37m would follow from the abolition of marriage value. It holds some 99 freeholds which were expected, prior to the LFRA 2024, to generate marriage value over the next 30 years.

525. The Secretary of State rightly acknowledged the excellent work John Lyon’s Charity did but did not admit the extent of any impact on the charity’s grant-making capacity of the removal of marriage value. While we are unable to reach any conclusions as to the precise impact, we accept that the removal of marriage value is likely to have an appreciable effect on the income of John Lyon’s Charity, and its grant-making capacity. The process of making enfranchisement cheaper for tenants – one of the stated objects of this legislation – will inevitably impact the amount received by the holder of a significant number of freeholds in PCL like John Lyon’s Charity.

Consideration of the effect of enfranchisement reform on charities prior to the enactment of the LFRA 2024

526. The Valuation Report of January 2020 noted at [1.23] that some landlords had suggested in the course of the consultation process that “reducing premiums would reduce the income of some charities and reduce the value of some pension funds”, with the report expanding on the concerns expressed at [3.171]. At [3.191], the report noted that, from the tenant’s perspective, it did not matter who their landlord was because the systemic problems of leasehold ownership were present regardless. At [5.60], the report recorded evidence from John Lyon’s Charity as to the impact of the proposed reforms on them. The Enfranchisement Report returned to this issue. At [6.377], it recorded the submission of John Lyon’s Charity as to the effect the reforms would have on its charitable giving.
527. At [7.277]-[7.278], the Law Commission recommended against any exemption from enfranchisement on this basis, because “like all landlords, charities generally grant long leases as a way of making money from their property assets” and “we do not see why the purpose or purposes for which that money will be used should have any bearing on whether enfranchisement rights are available to the leaseholder.” That conclusion was endorsed in [2.40] of the DLUHC response of 27 November 2023 to the DLUHC consultation of January 2022 and reflected in advice to the Housing Minister of 6 November 2023, in which it was also stated that the rights of tenants should not depend on the identity of their landlord, and “there would be undesirable outcomes if more landlords seek to become charities to avoid requirements.”
528. John Lyon’s Charity raised the same arguments in correspondence and at meetings with Government representatives in the period following the Enfranchisement Report, including through the Rt Reverend David Walker, Bishop of Manchester. The Government’s position did not change.
529. The IA of 31 October 2023 placed before Parliament provided at [134]:
- “While it is difficult to generalise about freeholders (who will hold different portfolios of short and long lease properties, and with different ground rents), large freeholders, charities who own freeholds, and pension funds are very unlikely to rely solely on income from enfranchisement. Freeholders often have

diversified business interests, which mitigates the financial impact and reduces the likelihood of insolvency. We think that freeholders who hold a significant number of freehold titles are likely to pursue one of two main investment strategies: there will be those who hold a portfolio comprised of modern developments who generate an income through ground rents and there will be those who hold the freeholds of older properties who look to generate an income from enfranchisement. For freeholders of older properties, there is a higher likelihood of leases 80 years or under and therefore payment of marriage value. For portfolios of modern leases, we know that there is a higher prevalence of leases with high or escalating ground rents. For these properties, while enfranchisement may be less common currently, there is an expectation that when it arises a significant proportion of the premium will relate to the level of ground rents. These investments are therefore significantly affected by the 0.1% on ground rent in the valuation calculation.”

530. The ECHR Memorandum referred to [27]-[29] to certain exemptions granted for particular charities:

“Paragraphs 4 and 5 of Schedule 1 provide for an exemption from collective enfranchisement claims for community-led housing (CLH). The exemption will apply to a CLH organisation which has obtained a declaration from the Tribunal to that effect that it satisfies or will satisfy the definition of community-led housing.

A1P1 is engaged by this measure in the sense that unless the application process for an exemption is applied for these types of houses will not be exempt from the wider reforms. The measure is proportionate as the exemption is a means of providing an affordable supply of housing to members of a community for the long-term benefit of that community as affected properties will remain in community ownership, which is a legitimate policy aim.

For certain, specified leases of inalienable National Trust land, for example, leases of visitor attraction properties, the National Trust will enjoy a complete exemption from all enfranchisement claims under the new regime in the Bill, though on the basis that where any such leases would benefit from the lease extension right under the LRA 1967 Act, that right will remain available.

All other leases of inalienable land will be excluded from freehold acquisition rights, but will benefit from the same 990-year lease extension right as all other long leaseholders.

Where a leaseholder of inalienable National Trust land has extended their lease under the new regime in the Bill, the lease will thereafter be subject to a right of first refusal in favour of the

National Trust. The National Trust will be entitled to “buy back” the lease whenever the leaseholder seeks to dispose of it.

AIPI is engaged by this measure though Government considers it to be compliant. The proposals have been consulted on and designed in conjunction with National Trust leaseholders and the National Trust, with a balance being struck between the interests of leaseholders having the same lease extension rights as ordinary leaseholders, with that of the National Trust in holding the property for the benefit of the public in perpetuity. Freehold acquisition rights continue to be excluded and where a lease is extended, the right of first refusal will enable the National Trust to take back the property if the leaseholder wishes to sell. The new valuation methodology will apply to provide compensation to the National Trust for lease extensions at market value. Paragraphs 7 and 8 of Schedule 1 provide for the following new regime of enfranchisement rights for National Trust owned properties, in place of the current limited rights available to leaseholders.”

531. Before the publication of the Bill in November 2023, there was extensive consultation between charities concerned about the effect of the proposed reforms on their investment returns, and the Government, including John Lyon’s Charity, both through correspondence and at meetings. The Government continued to correspond and meet with John Lyon’s Charity during the passage of the Bill. The Portal Trust responded to the Law Commission’s consultation and wrote to the then Secretary of State setting out its concerns on 8 April 2022. As would be expected, in those interactions essentially the same points were made in favour of differential treatment as are relied upon now.
532. So far as the position in Parliament is concerned:
- i) On 26 March 2024 (Vol 837 co. 767), the Government Minister, Baroness Scott of Bybrook, referred to the Bishop of Manchester “attempting to create carve-outs for specific groups of landlords - for example charities” and expressed the view that this “would complicate the system that we aim to simplify and would risk both perpetuating and creating a two-tier system”.
 - ii) In the Lords Committee Stage on 24 April 2024, Amendment No 28 intended to preserve both marriage and hope value where the landlord was a charity was withdrawn (Vol 847 col 1504 and 1513-1514).
 - iii) Amendment No 20 to similar effect was brought forward and then withdrawn during the House of Lords Report Stage on 24 May 2024 (Vol 838 cols.1338, 1342).
533. We do not consider that any assistance is to be gained from the fact that the submission to the Housing Minister and Secretary of State on 6 November 2023 contemplated the possibility that concessions might be made on a range of issues not limited to the position of charities, should this be necessary for political reasons. Officials advised that the Government should maintain its approach, Ministers agreed with that advice and that was the course that was taken. It is entirely a matter for speculation as to what

concessions might have been discussed in relation to which issues and what the outcome might have been.

The effect on landlords with charitable status

534. The essential thrust of the submission made by John Lyon’s Charity is that, even if the removal of marriage value from the enfranchisement premium could otherwise be viewed as involving a fair balance of the objects of the legislation with the interference with landlords’ A1P1 rights, that is not the case for landlords with charitable status because of the effect on their grant-making abilities.
535. As we have explained, this issue was considered extensively in the pre-legislative period, and the view consistently adopted by the Law Commission and the Government was that it was not appropriate to make an exception for freeholds held as an investment by charities for three reasons: the freeholds represented an investment made for monetary benefit as much for charities as other owners of freeholds; from the perspective of tenants, the unfairness inherent in leasehold as a form of tenure applies as much to those who held their leaseholds subject to the superior title of charities as for other landlords; and there was a risk of increased complexity and market distortion if charity landlords were treated differently. Those views were clearly articulated in Parliament during the passage of the Bill through Parliament, and attempts to include an exemption for charities failed to secure sufficient Parliamentary support for them to be put to a vote.
536. In those circumstances, the decision not to exempt charities from the removal of marriage value is entitled to a considerable margin of appreciation, and we conclude that there is no sufficient basis for challenging that decision in these proceedings. The argument that the use to which a landlord would put the proceeds of an investment merits exemption from what would otherwise be the proportionate pursuit of a legitimate object is not an obviously compelling one. As Ms Crowther observed in her evidence on behalf of the Secretary of State, it was open to Parliament to take the view that “the good work of a charity in its expenditure is separable from the charity as freeholder, where it raises its revenue.” As investors, charities operate in the same market as others investing in the same field of activity, and the effect of the exemption would be to place charities at a considerable competitive advantage as against other investors in the same asset class. The arguments which John Lyon’s Charity has employed would be equally applicable to legislative interference with any asset class in which charities carried significant investments – to take intentionally unlikely examples for the purposes of illustration, investments in cryptocurrencies, electronic cigarettes, e-bikes or hydrocarbons. They are also potentially applicable to freeholds owned by particularly philanthropic non-charitable entities.
537. In this regard, we note the observations of the ECtHR in *Karibu Foundation v Norway* Application No 2317/20 (ECtHR judgment 3, April 2023). At [69], the Court noted that the applicant (a foundation supporting religious activity) had submitted “that a heightened scrutiny of the proportionality of the interference should be carried out in the light of Article 9 of the Convention, given the applicant organisation’s activities.” At [71], the Government responded that “the individual circumstances of the parties to the domestic case ... could not be decisive; the purpose of legislating would suffer if the legislature could only adopt discretionary and generalised clauses.” At [93]-[94], the Court found that a “fair balance” had been struck and that the domestic courts had

“adequately balanced the applicant’s personal interests against the more general public interest in the case.”

538. John Lyon’s Charity sought to rely on the LFRA 2024’s treatment of the National Trust and charitable or certified community housing trusts in support of its arguments. However, the holding of property formed part of the core charitable mission of those entities, rather than a commercial investment activity, the proceeds of which were intended to fund other charitable activities. We conclude that the distinction drawn by the LFRA 2024 in this respect, and the basis for it articulated in the passages in the ECHR Memorandum to which we have referred, strikes a fair balance and falls within the legislature’s margin of appreciation. Nor, if the matter were to be argued with reference to Article 14 of the ECHR, are we persuaded that the differential treatment of the National Trust and John Lyon’s Charity (and other charities whose holding of freeholds forms part of their investment activity rather than core charitable objects) strikes an unfair balance or otherwise falls outside Parliament’s margin of appreciation.
539. Finally, we note that John Lyon’s Charity accepted that “if marriage value is indeed an unfair and unreasonable overpayment, then there is a logic to acknowledging that to be so irrespective of the identity of the freeholder”. However, that is indeed a view which Parliament has, and was entitled to, come to. We would similarly observe that if (as we have found to be the case), Parliament has concluded that ground rents above 0.1% of the FVPV are onerous and, to that extent, should not be reflected in the calculation of the enfranchisement premium, then that observation is equally applicable to enfranchisement claims against landlord charities.

15. The case for the Portal Trust

Introduction

540. The Portal Trust, formerly known as the Sir John Cass Foundation, was founded in 1748. It is the freehold owner of the Hackney Estate which was inherited by Sir John Cass, and endowed for charitable purposes. The Hackney Estate has been developed as a residential area over many years, including through the construction of numerous commercial and residential properties, for the purpose of generating income to be used for the Portal Trust’s charitable activities. The Hackney Estate is the principal source of the Portal Trust’s asset base, although it also holds a diversified portfolio of assets, most of which were acquired with income from the Hackney Estate. In 2022/23, 13% of the Portal Trust’s cash income derived from the Hackney Estate, a figure which is expected to increase on the next rent review due in March 2026.
541. Up to 1976, the Portal Trust managed the Hackney Estate itself. In that year, the Portal Trust entered into two leases in respect of between 512 and 550 residential properties and certain commercial properties, shop premises and development sites properties on the Hackney Estate with the World of Property Housing Trust Housing Association, later renamed the SHA. In approving the transaction, the executive committee of the Portal Trust referred to “the heavy drain on the Foundation’s resources of the continuing maintenance of the Estate” and “the fact that there would appear to be no acceptable alternative expedient in the present circumstances.”
542. The SHA acquired the leasehold interests pursuant to those two leases (the “A Lease” and “B Lease”) with financial support from Hackney Borough Council. The leases were

for a premium of £2.275m. The initial ground rent was £9,125, which was to be reviewed every 25 year based on 5% of the gross values of the properties or such equivalent as may at the time be in force.

543. At the time the A and B Leases were executed, SHA had no right of enfranchisement because the prevailing legislation imposed an occupancy qualification for rights of enfranchisement. That qualification was removed by the CLRA 2002.
544. Since 1976, development of the estate has increased the number of residential properties to 841: 335 houses, 350 flats, 138 maisonettes and 18 letting rooms in houses of multiple occupation. SHA has also expanded over the intervening period, becoming a major registered provider of social housing with 125,094 homes under management, group revenue of £1.085 billion and an operating surplus of £215.2m. The group balance sheet shows £6.3 billion of assets.
545. At a meeting on 25 February 2020, SHA expressed an interest in either extending Leases A and B or acquiring the freeholds of the residential properties which were the subject of the lease to improve their ability to borrow funds for the refurbishment of property (to which the limited period remaining on Leases A and B was proving an impediment). SHA has yet to make an offer for enfranchisement in either form.
546. The Portal Trust does not admit SHA's right to enfranchise. However, it has submitted evidence to show that the effect of the LFRA 2024 will be a significant reduction in the amount it would receive on any enfranchisement. The Portal Trust is not dependent on enfranchisement income (para. 41 of the witness statement of Mr Foley on behalf of the Trust) and so it has not suffered a loss of revenue. But its asset value as reflected in its accounts has been impacted by the LFRA 2024. It has estimated a reduction in its asset value upon any statutory enfranchisement of the SHA leases of between 43% and 47% (principally through the removal of marriage value, but also with impacts from the Ground Rent Cap).

The pre-legislative and legislative process

547. The Portal Trust explained its position and concerns in consultations with the Law Commission and the Government. Its submissions on this challenge largely reflect the submissions previously made.
548. In the Consultation Paper, the Law Commission discussed restricting existing enfranchisement rights so far as commercial leaseholders were concerned, while recognising a number of risks and difficulties in doing so ([8.185]-[8.186]). One possible means of achieving that end which was identified was the reintroduction of a residence test, together with a limit on the number of units in a building which "would inevitably be somewhat arbitrary" but on which their "current thinking ... is that the maximum should be set at around four. Having more units than this would tend to indicate that the premises in practice operate as a commercial investment even if the landlord happens to live in one of the units" ([8.188]).
549. Portal sought to rely in this regard on a passage from the Parliamentary debates on the Leasehold Reform (Ground Rent) Act 2022, for the purpose of identifying the objects of the LFRA 2024. We do not accept that reference to statements in the course of the passing of another Act, with different objects, different language, and at an earlier point

in time, is permissible for the purposes of identifying the objects of the LFRA 2024, or for applying the proportionality balance in relation to the LFRA 2024. We accept the submissions of the Speaker's counsel that this is not a permissible use of Hansard. In *ALR Annex B* at [83] states:

“The question in *Wilson* was whether it was permissible for a court considering the Convention compatibility of an Act of Parliament to consider statements made *during the passage of the Bill* about its aims and objectives. It was in that context that Lord Nicholls said that it may be necessary to look outside the statute ‘in order to see the complete picture’, including ‘the nature and extent of the social problem (the ‘mischief’) at which the legislation is aimed and that, if information relevant to these matters had been provided by a minister or other member ‘*in the course of a debate on a Bill*’, the courts must be able to take it into account, subject to strict caveats: see [61]-[64] and [66]-[67]. *In our judgment, these passages apply only to statements made during the passage of the Bill which became the Act whose compatibility is in issue*, and not to other parliamentary statements relied upon by one side or other in support of a submission on a contested factual issue.” (emphasis added)

550. Nor are we persuaded that the treatment of the so-called Michael Bill in *R (Countryside Alliance) v Attorney General* [2008] 1 AC 719 supports the contrary argument. As the Speaker submits, the Michael Bill was the bill first introduced by the Government which was then heavily amended so as to become the Hunting Act 2004, and therefore the Bill which (albeit in heavily amended form) became the Act the compatibility of which was in issue.

The objects of the LFRA 2024

551. We have already dealt with the argument that in order to be compatible with A1P1, the LFRA 2024 needed to include an exemption so far as the removal of marriage value and the Ground Rent Cap are concerned for landlords with charitable status. In oral submissions, Mr Westgate KC principally focussed on arguments which arose from the specific and historic position of the Portal Trust and Leases A and B. In short, he submitted that the LFRA 2024 can never have been intended to apply to Leases such as the A and B Lease, in which the tenant was essentially a large and well-resourced corporate entity, which was not itself using the leased properties for residential purposes. He submitted that whatever arguments might arise as to inequality of bargaining power when dealing with owner occupiers or leaseholders of a small number of flats, they clearly have no application to a professionally advised and well-resourced entity who entered into a high value transaction for commercial purposes, fully cognisant of the terms and implications of the transactions it was entering into.
552. In effect, this argument is a more refined version of the argument advanced by the claimants more generally, that the objects – or at least the legitimate objects – of the LFRA 2024 were limited to improving the position of owner-occupiers, or at least smaller scale investors. However, we have already set out our reasons for concluding that the legitimate objects of the LFRA 2024 were not so limited, but were concerned with addressing what had been identified as fundamental deficiencies in leasehold as a

form of property ownership, namely the wasting nature of the tenants' asset despite the economic contributions made by tenants, the unfair imbalance in the relationship and the lack of security and control involved in leasehold ownership. We were offered no reason as to why those criticisms which Parliament set out to address were not equally present in the current transaction, in which SHA paid a significant premium for the two leases and now, at least on its own account, finds itself in difficulty in raising funds for renovations of the estate properties because of the period remaining on the leases.

553. Nor are we persuaded that the Portal Trust's Article 14 argument, based on alleged *Thlimmenos* discrimination, adds materially to the A1P1 argument in this case. The objects of the LFRA 2024 apply as much to a landlord in the position of the Portal Trust as to a landlord who has entered into multiple leases, or a single lease relating to multiple properties, or a single lease relating to a single property. Whether considered at the stage of the scope of the LFRA 2024 generally, or the failure to make an exemption by reference to the Portal Trust's "other status" where no "suspect ground" is engaged, Parliament enjoys a wide margin of appreciation, and the measures under challenge do not fall outside that margin.
554. Finally, it is important to place the Portal Trust's arguments in context. It was the CLRA 2002 which removed the legal impediment which had previously prevented SHA from enfranchising, namely the residence requirement. No challenge was brought to that statutory reform by the Portal Trust, and it is not open to the Portal Trust to contend that its A1P1 rights are infringed simply because SHA may enjoy a statutory right to enfranchise. Its complaint now is, in effect, that SHA should not benefit from the Ground Rent Cap and removal of marriage value because it is a business and because, in effect, those reforms will make it more likely that the SHA would exercise any rights of enfranchisement it may have. However, the objectives of the LFRA 2024 included making existing rights of enfranchisement cheaper for those who already had them, and, specifically in the context of the three reforms:
- i) capping the ground rent figure for the purposes of calculating the enfranchisement premium at 0.1% because ground rents above that level were perceived as onerous and unfair;
 - ii) removing the obligation to pay market value, which is a product of the wasting asset problem and the unfair imbalance between landlord and tenant; and
 - iii) removing the obligation to pay the landlord's non-litigation costs, which is incompatible with the need for tenants to address the wasting asset problem by paying a premium based on market value.
555. The Portal Trust did not explain why those legislative objects were not equally applicable to a tenant in the position of the SHA and why the SHA, which has since 2002 been subject to the same enfranchisement regime as other tenants, should not benefit from legislation intended to address the perceived inadequacy in that regime.
556. The Portal Trust did, however, rely on the fact that "regulated leases" for the purposes of the Leasehold Reform (Ground Rent) Act 2022 are limited to leases for single dwellings (s.1), with the result that the prohibition on rents greater than a peppercorn (s.3) is similarly so limited. Likewise, the prohibition on new leases of houses contained in Part 1 of the LFRA 2024 only applies where the lease demises "one house, with or

without appurtenant property and nothing else” (Condition B in s. 5). However these are outright prohibitions relating to the terms or subject-matter of future leases, rather than the assessment of enfranchisement compensation in relation to existing interests on a basis which remains reasonably related to market value. While they assist the Portal Trust in arguing that a limitation of the kind it says should have been made would have been feasible from a drafting perspective (as do the other legislative references to “single dwellings” to which the Portal Trust referred), they do not establish that the absence of a similar limitation in a legislative provision with a different object and content fails to draw a fair balance between the competing interests for A1P1 purposes.

557. Finally, the Portal Trust submits that the exception in sched. 2 para, 23(7)(b) is too narrowly drawn, because of the difficulty, with leases of the antiquity of Leases A and B, of showing the premium was reduced to justify a higher ground rent. The materials presented by the Portal Trust do not suggest that the ground rent was justified by a higher premium (the agreed ground rent remaining the same even as the premium was reduced during negotiations from £2.7m to £2.275m, at a time when the property market conditions were recorded as deteriorating). In any event, however, whatever evidential difficulties might be faced by the Portal Trust in respect of this singular transaction does not, in our view, take the ambit of the exemptions outside the scope of Parliament’s legislative margin of appreciation. (For the general position see [380(iii)] above).

16. Conclusion

558. For all these reasons, we conclude that the measures under challenge, the Ground Rent Cap, the Marriage Value Reform and the Costs Recovery Reform, whether considered individually or cumulatively, including their application to charities, are compatible with A1P1. Accordingly, each of the claims is dismissed.

ANNEX 1

LIST OF ABBREVIATIONS

1966 White Paper	White Paper “Leasehold Reform in England and Wales” (Cmnd. 2916 – February 1966)
2000 Consultation Paper	Commonhold and Leasehold Reform – Draft Bill and Consultation Paper” Cm 4843 published in 2000
2017 UPP	Government consultation paper “Tackling unfair practices in the leasehold market – a consultation paper” published in July 2017
2017 White Paper	Government White Paper, “Fixing our broken housing market” published in February 2017
A1P1	Article 1 of the First Protocol (“A1P1”) to the European Convention of Human Rights
Addendum IA	Addendum to the IA produced on 14 April 2025
APPG	All Party Parliamentary Group for Leasehold and Commonhold Reform
BRF	Better Regulation Framework
C&G	Cadogan and Grosvenor claimants
CLRA 2002	Commonhold and Leasehold Reform Act 2002
CMA	Competition and Markets Authority
CMA 2024 Response	CMA response to Government consultation on restricting ground rent for existing leases published in January 2024
CMA Update Report	Competition and Markets Authority report, “Leasehold Housing Update report”, published on 28 February 2020
Commonhold Response	Government response to the consultation on “Reforming the leasehold and commonhold systems in England and Wales” published on 17 November 2024
Consultation Paper	Law Commission Consultation Paper No.238 of 20 September 2018, “Leasehold Home Ownership: Buying Your Freehold or Extending Your Lease”
Costs Recovery Reform	Proposed changes to incidence of costs in enfranchisement claims introduced by the LFRA 2024
DLUHC	Department for Levelling Up, Housing and Communities
DLUHC Consultation January 2022	Government consultation paper, “Reforming the Leasehold and Commonhold Systems in England and Wales” published in January 2022
DoI	Declaration of Incompatibility
EANDCB	Equivalent Annual Net Direct Cost to Business, a measure of the impact of legislation on business on an annual basis
ECHR	European Convention on Human Rights
ECHR Memorandum	A memorandum assessing the compliance of the Bill, as amended at the House of Commons Committee stage, with the ECHR published on 16 February 2024
ECtHR	European Court of Human Rights
Enfranchisement Report	Law Commission report, “Leasehold home ownership: buying your freehold or extending your lease” (No.392) published in July 2020

FIAF	ARC TIME Freehold Income Authorised Fund
FVPV	Freehold vacant possession value
Ground Rent Cap	Proposed 0.1% FVPV cap on ground rent to be reflected in the enfranchisement premium introduced by the LFRA 2024
HA 1969	Housing Act 1969
HA 1974	Housing Act 1974
HA 1996	Housing Act 1996
Hackney Estate	Land and buildings in Hackney making up the endowment of the Portal Trust
HCLGSC Report	Report by the Housing, Communities and Local Government Select Committee “Leasehold Reform: Twelfth Report of Session 2017–19” published on 19 March 2019
HRA 1998	Human Rights Act 1998
IA	Impact Assessment of the Bill in October 2023 published on 11 December 2023
LFRA 2024	Leasehold and Freehold Reform Act 2024
LRA 1967	Leasehold Reform Act 1967
LRHUDA 1993	Leasehold Reform, Housing and Urban Development Act 1993
LVT	Leasehold Valuation Tribunal
Marriage Value Reform	Proposed removal of marriage value from enfranchisement premium introduced by the LFRA 2024
MHCLG	Ministry of Housing, Communities and Local Government
NPV	Net Present Value
NPVB	Net Present Value to Business (“NPVB”), a measure of the net direct and reasonable indirect benefits of a policy specifically to business
NPSV	Net Present Social Value, a measure of the net impact of legislation to society and the economy as a whole, including business
PCL	Prime Central London
Red Book	RICS’s Valuation – Global Standards
RPC	Regulatory Policy Committee
RTM	Right to Manage
SHA	Sanctuary Housing Association
ToR	The Terms of Reference for the Law Commission Consultation Paper
Valuation Report	Law Commission report, “Leasehold home ownership: buying your freehold or extending your lease - Report on options to reduce the price payable” (Law Com No 387) published on 8 January 2020.

ANNEX 2

CLAIMANTS' PROPOSED FORMULATIONS OF DECLARATIONS OF INCOMPATIBILITY

1. Version of DoI relating only to the claimants

“It is declared that:

pursuant to s.4 of the Human Rights Act 1998, the following provisions of the Leasehold and Freehold Reform Act 2024 are incompatible with the A1P1 rights of the claimants in these proceedings (insofar as challenged in each of their individual cases):

- a. *Section 37 and paragraph 26(4) of Schedule 4 (the Cap), including the application of these provisions to s.48 by paragraphs 1 and 7(6) of Schedule 10;*
- b. *Paragraph 17(3) of Schedule 4 (Marriage Value Removal);*
- c. *Sections 38 and 39 (Cost Recovery Removal).”*

2. Version of the DoI reflecting incompatibility for the class or category of all freeholders

“It is declared that:

pursuant to s.4 of the Human Rights Act 1998, the following provisions of the Leasehold and Freehold Reform Act 2024 are incompatible with A1P1:

- a. *Section 37 and paragraph 26(4) of Schedule 4 (the Cap), including the application of these provisions to s.48 by paragraphs 1 and 7(6) of Schedule 10;*
- b. *Paragraph 17(3) of Schedule 4 (Marriage Value Removal);*
- c. *Sections 38 and 39 (Cost Recovery Removal).”*

3. Version of the DoI reflecting incompatibility other than in owner-occupier/consumer cases.

“It is declared that:

pursuant to s.4 of the Human Rights Act 1998, save in cases in which the leaseholder is [an owner-occupier] [a consumer], the following provisions of the Leasehold and Freehold Reform Act 2024 are incompatible with A1P1:

- a. *Section 37 and paragraph 26(4) of Schedule 4 (the Cap), including the application of these provisions to s.48 by paragraphs 1 and 7(6) of Schedule 10;*
- b. *Paragraph 17(3) of Schedule 4 (Marriage Value Removal);*
- c. *Sections 38 and 39 (Cost Recovery Removal).”*

4. Version of the DoI reflecting incompatibility only in the case of charity freeholders.

“It is declared that:

pursuant to s.4 of the Human Rights Act 1998, in cases in which the freeholder is a charity, the following provisions of the Leasehold and Freehold Reform Act 2024 are incompatible with A1P1:

- a. Section 37 and paragraph 26(4) of Schedule 4 (the Cap), including the application of these provisions to s.48 by paragraphs 1 and 7(6) of Schedule 10;*
- b. Paragraph 17(3) of Schedule 4 (Marriage Value Removal);*
- c. Sections 38 and 39 (Cost Recovery Removal).”*

5. Version of the DoI for Portal

“It is declared that:

pursuant to s.4 of the Human Rights Act 1998, that the following provisions of the Leasehold and Freehold Reform Act 2024, namely: -

- a. Section 37 and paragraph 26(4) of Schedule 4 (the Cap), including the application of these provisions to s.48 by paragraphs 1 and 7(6) of Schedule 10;*
- b. Paragraph 17(3) of Schedule 4 (Marriage Value Removal);*
- c. Sections 38 and 39 (Cost Recovery Removal).
 (“the Provisions”)*

are incompatible with Article 1 of the First Protocol of the ECHR (A1P1) and with Article 14 in conjunction with A1P1 insofar as the Provisions fail to make any exceptions for leases granted to and held by the lessee for business purposes.”