

27 MAY 2009

Mr Robert Levene
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Your ref
Our ref CRE-E/10805
Date 22 May 2009

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Dear Mr Levene

Unfair Lease Transfer Fee

Thank you for your letter of 7 May to Mike Haley in which you requested clarification in relation to the undertaking obtained by the OFT from McCarthy & Stone. I have been asked to respond.

The undertaking given by McCarthy & Stone made it clear that the Transfer Fee provision will:

- not be included in the leases for new developments as they were set up on or after 1 September 2008; and
- will not be enforced in existing developments (those set up prior to 1 September 2008) where McCarthy & Stone remains the landlord.

I should make it clear here that the undertaking was obtained from McCarthy & Stone. We are also aware that other companies such as Peverel rely on similar term in their leases and that the undertakings the OFT has obtained would not be binding on any company that is not an interconnected business with McCarthy & Stone. We are considering this matter but we are unable to supply you with further information as there are strict rules on what we can disclose about action that may be being contemplated or is underway.

You also ask for the OFT's view as to whether reliance on the term is fair where the resident of the property owns the freehold. The undertaking was given in relation to a term in a lease for leaseholders and we are unsure how such a term – which charges a fee when the lease is assigned to someone else, either by way of sale or renting out - would operate in a situation where the resident owns the freehold. The term you refer to may be



a considered a 'contingency charge' rather than a 'transfer fee' – and is a charge which is made where the money is used for the benefit of the block and acts to keep annual service charges lower. If this is the case, then our view of such charges is that such a term could be beneficial to consumers if its purpose was to finance long-term repairs and it could be shown that the sums paid into the contingency fund resulted in reduced annual service charges - although we could reconsider our position pending complaints or other evidence that the term operated unfairly.

I hope you find the above useful.

Yours sincerely

Ian Levey
Consumer Protection Group