FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS
THE VOICE OF LEASEHOLDERS
Representing Residents' Associations, Residents' Management Companies, Right to Manage Companies and similar groups

To
LeaseholdHousesConsultation@communities.gsi.gov.uk

Wednesday, September 13, 2017

FPRA Response to Consultation by DCLG on
TACKLING UNFAIR PRACTICES IN THE LEASEHOLD MARKET

Who we are:-
The Federation of Private Residents Associations (FPRA) is a not-for-profit advice, support and representative organisations for private residential leaseholders', tenants' and residents' association, and leaseholder and resident owned freehold ownership and management companies. We are the national voice of residents' associations and are frequently consulted by government.

Response
We have completed your consultation question response form as attached, but there are four key points we particularly want to comment on:-

1. **Limiting Ground Rents in New Lease**

Even in those cases where the leaseholders own the freehold of their block of flats, the individual flat "owners" can only hold leasehold interests in their flats. The freehold has to be owned by a Limited Company, typically a Company limited by Guarantee.

There are costs in running a company. The Companies Acts require records and accounts to be kept, returns submitted and meetings to be held. Where there are only small number of flats in the block, and individual leaseholder may be willing to undertake those tasks without payment. In the case of larger blocks, professional assistance will be likely to be needed. However, the costs of managing the Company, as opposed to the cost of managing the property, will not be able to be included in the service charges paid by leaseholders. The company will therefore need an independent source of income, which may be provide by Ground Rents.

For this reason, when leaseholders acquire the freeholds of their blocks, they are usually advised to retain at least the right to receive the ground rent payable under existing leases and to include a ground rent in when new, extended leases are granted.

FPRA would not therefore support the proposal in paragraph 4. 17 of the Consultation that ground rents in new leases should start and remain at a peppercorn level, in so far as it would apply to new leases granted by a company controlled by the leaseholders to whom, the leases would be granted.

2. **Exempting Leaseholders potentially subject to "Ground 8" Possession Orders due to their level of ground rent.**
FPRA agrees that the Housing Act 1988 (as amended by the Housing Act 1996) should be amended to ensure that a leaseholder paying an annual ground rent of over £1,000 in London or over £250 in the rest of England cannot be classed as an Assured Tenant. This possibility is clearly an unintended consequence of the legislation in the Housing Acts.

3. Whilst a reasonable ground rent is helpful to freehold companies for admin purposes, increases beyond this are sometimes foisted on Leaseholders who take the informal route to a lease extension when this is negotiated it is often referred to as a 'new lease' in particular by the Land Registry although for the leaseholder it is a continuation of their current lease. Excessive increases in ground rent can be brought in here and leaseholder in ignorance of the statutory route believed they have no choice.
(1) We suggest the definition if new lease includes Lease Extensions
(2) There is a duty for conveyancer to make lessees aware that a statutory route is also available

4. We think there are particular vulnerabilities in the retirement sector with particular concerns over these issues and would want to ensure that these are addressed. We attach as an example some comments from one of our members explaining vividly the frustration and unfairness that we hope you will be addressing.

Conclusion

We would like to work with government and other organisations to help drive forward these proposals.

Yours faithfully

Bob Smytherman
Voluntary Chairman

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One of our members' views explaining the frustration and unfairness of the present system prepared for FPRA Response to Consultation by DCLG on TACKLING UNFAIR PRACTICES IN THE LEASEHOLD MARKET
13 September 2017

I am 74 years-of-age and have lived in a 'retirement village' of apartments of mixed tenure, completed in 2014, owned and managed by a RSL. I have been a member of a tenants' association, since formation in 2015.

In addition to the sale of new leasehold houses and onerous ground rents, I believe that four prime issues regarding leasehold property are **'mis-selling'** and **transparency**, the **lease** itself, **regulation** and **dispute resolution**. The situation is graver when elderly, vulnerable citizens are 'lawfully enticed' into binding agreements (especially when buying into new 'retirement villages' with special facilities and services.)

Mis-selling: Currently, rogue developers may lawfully engage in deception and dishonesty on a massive scale, to entice potential buyers over many months by presenting positive information, withholding key information and promising 'the earth.' This should be prohibited and Purchasers' Information Packs and Management Agreements, as specified by NHBC, be a legal requirement.

Landlords, including RSLS, should be prohibited from enticing buyers by recommending their 'preferred' solicitor and offering other benefits, including attractive discounts for early exchange of sale contracts.

Leases, should be prohibited from containing a 'representation' clause, which prevents tenants claiming unfair/misleading practices. My lease gives unbridled powers to my landlord, an RSLS, to do anything it wishes, without consulting tenants, if it considers *it to be for the comfort and convenience of tenants* or *it is the interests of good estate management*. My solicitor stated that *this was 'normal'* and fail to warn me of the serious implications.

The Government's Homes & Communities Agency 'regulatory standards' - Tenant Involvement & Empowerment; since 2012, the purpose: - supposed to protect leaseholders/service charge payers and *"imposes rigorous obligations upon the registered social landlord."* The Agency requires **RSLs to treat tenants with fairness and respect** and provide:

- choices, information and communication
- a wide range of opportunities to influence and be involved in policy making, setting and scrutiny of service standards, management of their homes and repairs/maintenance.
- an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly.

My landlord has claimed it has consulted with tenants, but we consider such consultations to be 'nominal,' 'tokenistic' and 'decorative.' The RSL's complaints policy and procedures were amended and approved by directors in March and a statement claims the 'consultation forum; included

Sounding Boards. I applied to join the Leaseholders' Sounding Board over a year ago and understand that it does not exist!

In three years, four formal complaints have been presented. One was determined by the Housing Ombudsman, who concluded that there was maladministration of the complaints process. Three other cases have had requests for escalation ignore/rejected and they remain basically unresolved. 'Reviews' are underway, but with no indication of when action plans to fully resolve matters will be received. The complaint practices have been lengthy and complex and the RSL playing for time, ignoring key issues and avoiding the issues being escalated. Ombudsmen have preferred to 'encourage internal dispute resolution.'

The killer punch to several complaints by tenants were the RSL's claims that *"we are meeting our legal obligations," "we adhere to the requirements of the HCA's Regulatory Standards,"* or *"we have had regard to Association of Retirement Home Managers' Code of Practice."* The only option, it seems, is to resort to First Tier Tribunals and most elderly tenants do not have the energy to do that.

It is anticipated that the residents' association will expire before resolution of three complaints, contrary to the HCA's requirement of RSLs - that they *have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly!*

Answers to some reasonable questions by leaseholders remain unanswered, some take many months to be answered. Reasonable requests for repairs are not responded to. Annual service and rent accounts are often nominally audited, leaving tenants with few resources to expose and challenge 'errors.'

Three 'audited' annual service accounts have been challenged and residents over-charged by £800-900, soon to be more. Without scrutiny by the residents' association, this would not have been revealed!

My RSL employs a subsidiary limited company to maintain the property and has not justified its competitiveness. That company has gift aided the parent for years.

My experience of enticement and mis-selling, that took place over a year before occupation and resulted (after 18 months of occupation) in 40% of residents considered the Village 'failed to meet my expectations." *At sales presentations, we were told that "the Village was only for people wishing to partake in various activities which would be provided. It was not for people who wish to remain in their apartments."* After three years of occupation, the 'planned balanced community' (having an age profile of 25% of occupants 65 years and younger/ 75% 66-years and older, with approximately one third requiring some care and/support) has rapidly turned into more of a 'care home,' with about 87% aged 69-years and older and with more than 50% of the total requiring

care and/or support. The proposal for fit and active volunteers from the Village supporting frail neighbours has been almost been defeated, as the landlord has mainly accommodated elders who require professional care. Of the 14 residents that were accommodated during the last year, 11 do

not participate or contribute to the activities. Ten require professional care and one was admitted to hospital about two weeks after arriving at the Village and has remained there.

Accurate key Information was not provided for potential leaseholders prior to purchase. Our Tenants' Handbook is still not comprehensive and accurate.

A 'light touch approach,' the Homes & Communities Agency may intervene and issue 'regulatory notices' only if it finds a failure in standards that *has caused, or may cause, serious detriment to tenants or potential tenants.* These are merely fine words of advice. **In effect, the Agency has very little to do with protecting vulnerable elders who generally find it beyond their mental and financial capacity to effectively challenge RSLs.**

Various codes and charters of management practice issued by professional bodies, for example: Royal Institute of Chartered Surveyors, the Chartered Institute of Housing, the Institute of Chartered Accountants in England & Wales, the Associations of Retirement Home Managers, Residential Managing Agents and Retirement Community Operators. Newly built dwellings are regulated by Building Regulations (and approved building inspectors) and generally protected against defects in workmanship, materials, products and design (provided by warranties.) Codes of practice are voluntary and certificates of compliances for building regulation and standards are now issued by commercial companies, generally paid for by / under control of powerful organisations. Professional consultants and commercial regulators are often dependent on developers, so that very little or nothing is done by these professional associations when serious misdemeanours by members are brought to the attention of scrutiny panels.

A vote of 'not confidence in the organisation and administration' was carried by a majority decision in 2016.

There is very little or no demonstration that my RSLs understand, or cares for, the different needs of its tenants, very few validations of our concerns or explanation as to why needs and concerns will not be addressed.

Homes & Communities Agency 'regulatory standards' - Tenant Involvement & Empowerment are not worth the paper it' written on. Self-regulation and 'Co-regulation' is, in my opinion a farce and open to manipulation and falsification.

Recommendations: to better protect leaseholders (especially the elderly who are naïve and gullible in matters such as building construction and property law) **from unscrupulous landlords**, including RSLs:

There must be independent and impartial regulation, as is other major commercial areas. Protection from some most risks must be provided, like the 2008 Regulations for

Consumer Protection against Unfair (and Misleading) Practices. This requires traders and suppliers to provide key material information in a clear, intelligible, unambiguous and timely manner, so that consumers may make informed decisions and are not induced unfairly into legally binding transactions.

Regulated accurate Purchasers' Information Pack (for first purchasers of new build) as specified by NHBC – must be provided.

Homes & Communities Agency Regulatory standards must be strengthened to a statutory requirement.

Resources must be provided to enable the Housing Ombudsman to determine at least 50% of cases referred to it. Housing providers that breach statutory regulations must be named, shamed and penalised.

Introduce Commonhold Leases need to be fairly balanced between landlord and tenant, succinct and intelligible, ideally having gained accreditation from the Plain English Campaign.

The road to justice and resolution is an extremely time consuming and expensive process. From my experience, most elderly tenants are extremely vulnerable to exploitation and have little energy for and many fears about, when they choose to challenge powerful cartels or not.

Somewhere in the universe there is fairness and respect, but in my opinion, it isn't in English property law.