

The Association of Retirement Housing Managers (ARHM)
Southbank House
Black Prince Road
London SE1 7SJ

8 April 2013

Dear Sirs

ARHMs Consultation on Revised Code of Practice for Private Retirement Housing – England

The Federation of Private Residents' Associations (FPRA) is the national body which represents leaseholders in England and Wales, which it does via their Residents' Associations and similar bodies. It is an entirely voluntary organisation, with no outside resources, established over 40 years ago to represent the interests of leaseholders.

It has 500-600 member groups representing innumerable thousands of individual lessees. Many of these are in retirement blocks.

We receive a great many enquiries every year from retirement lessees about the management of retirement blocks and the problems facing them.

FPRA welcomes and congratulates ARHM on its desire to update its Code of Practice and improve the situation for retirement leaseholders.

We feel there is an opportunity here for ARHM to lead a step change in the way leaseholders generally and retirement leaseholders particularly, are treated by managers and others in the sector.

We see the Code of Practice as a very important document, not only because of its potential for statutory recognition, but also to set the basic standard for the industry.

The recent Office of Fair Trading (OFT) report on transfer fees, combined with work by the Institute of Chartered Accountants for England and Wales (ICAEW) and the change in the Financial Services Authority (FSA) to the FCA, again brings consumer protection to the fore.

It is unfortunate that the consultation process being undertaken at this stage has not involved ordinary retirement leaseholders and we also regret that FPRA was not included in discussions prior to the publication of the consultation. We feel that ARHM has potentially missed an opportunity to really engage with retirement leaseholders and we hope that before the Code is finalised, it takes the opportunity to do so. We understand that ARHM members manage some 105,000 leasehold properties and wouldn't it be great if through its members, it made all of them aware that you were considering an update to the Code of Practice and asking for comments from the very people most affected. FPRA urges ARHM to consult directly with retirement leaseholders before the Code is finalised.

Due to the timing of the consultation and unfortunately, illness within our own voluntary committee, it has not been possible for us to widely consult our own retirement Residents' Association members and therefore this response has been drafted based upon our experience of the sector and previous discussions with our members etc. At least one of our Executive Committee is a retirement flat leaseholder.

Turning to your specific points, we're not able to comment fully in the same order, but to try and assist we have tried to fit in.

B1 Do you agree that this draft code is an improvement on the current version? YES/NO

If no, please comment.

Yes. But, we feel it could do with further improvement.

B2 Do you agree that this draft code is written in a consumer friendly way to assist retirement leaseholders? YES/NO

If no, please comment.

We recognise it is very difficult with complex issues to simplify and write with complete clarity. We feel there is opportunity to further improve both the wording and its presentation and that a revised and modern design could particularly aid older people in their comprehension of the complex issues. Plain English campaign or similar organisation may be able to assist.

B3 Do you agree that the principles of management in chapter 1 are a useful addition to the code? YES/NO

If no, please comment.

Yes, but does not go as far as we would wish. We feel the principles here are such that the managers instead of 'Should', be obliged to comply by the word 'Must'.

The first line should in our view say: 'Honest open and fair manner....'

The second line, Why only transparent in financial dealings. Why not transparent in all dealings.

We are concerned that in the limitations of this Code of Practice by the final bullet point which seems to give an 'Get out' without sufficient reason.

B4 Do you agree that managers should open separate bank accounts for every scheme to protect leaseholders' service charges as recommended in chapter 4? YES/NO

If no, please comment.

Yes. We consider this a fundamental protection. We also think it should be clear that service charge and reserve funds (various names) are also kept separate.

B5 Do you agree that all schemes should have annual service charge accounts issued within 6 months of the financial year end? YES/NO

If no, please comment.

Yes, and indeed, there is argument for a shorter period. We are concerned that many leaseholders will not understand and do not currently understand many service charge accounts that are produced. There needs to be a very clear explanation in addition to any statutory accounts, showing the original budget and the actual figure and the reason for any variation.

We would observe that AHRM are not promising a lot here, as if agents don't comply with this standard, then they are in danger of being in breach of s20B LTA 1985, unless they issue a notice under s20B(2).

We also believe there should be a clear and open invitation to inspect all invoices and receipts without charge and in an accessible manner to retirement leaseholders.

B6 Do you agree that all service charges accounts should have a balance sheet as well as an income and expenditure statement? (Chapter 5) YES/NO

If no, please comment.

Yes, but as with B5 above, a clear explanation needs to be given.

B7 Do you think that chapter 8 on disclosures of commissions and associates goes far enough to satisfy leaseholders' concerns? YES/NO

If no, please comment.

No. We feel this is a fundamental failure of the ARHM Code and is fundamental to the whole market and underlines the whole distrust and failure of the sector. It also directly conflicts with the intent and wording of Chapter 1 Principles of Management.

Although this refers specifically to insurance commissions, there are many other commissions, kick-backs and other abuses, such as Energy company commissions, lift contracts, associated company fees and others.

The basic fundamental is the manager should be charging a fee for its services and be receiving NO other income from any source whether disclosed or not, as the very receipt of these other incomes and commissions undermines the whole principle of independent professional management.

It is our view that receipt of commissions and other payments is dishonest and indeed may be criminal under the Bribery Act 2010, albeit this has not yet been tested in the courts.

For ARHM to seek to have approved a Code of Practice that potentially gives credence to an inappropriate and potentially criminal activity undermines all the other good work being undertaken.

We believe there is a real opportunity here for ARHM to set the standard for the whole industry and make a real difference to leaseholders generally and retirement leaseholders particularly. Please do not miss this opportunity.

B8 Which of the alternative approaches to handling complaints do you prefer as set out in chapter 11? Ie. The 'no more than three stages' approach or the 'right first time' approach?

We have not had an opportunity to comment on this question.

**B9 Do you think that any additional costs and/or burdens (financial or non-financial) will result from complying the updated best practice requirements set out in the draft revised code? YES/NO
If yes, please comment.**

We have not had an opportunity to comment on this question, but would say this is probably beyond our remit. It is important that the cost is balanced with the good management and confidence that comes from this.

**B10 Do you think that there will be any savings or other efficiencies as a result of the draft revised Code? YES/NO
If yes, please comment.**

We have not had an opportunity to comment on this question.

It would be helpful to know:

- **Where the savings or efficiencies would be realised?**
- **The estimated monetary value of any savings or efficiencies?**
- **If any, what are the non-monetary savings or efficiencies?**

We have not had an opportunity to comment on this question

Additional comments:

1. Transfer fees. In the light of the OFT report, we would suggest that ARHM make specific reference to the OFT report. FPRA view is that transfer fees should only be applied where the benefit is to the service charge account and not to a remote developer or other party that does not benefit the lessee.

2. We have repeatedly seen reserve accounts used to pay what are effectively routine service charge bills so as to artificially disguise the true situation. There should be a clear obligation to budget for reserve funds and to be a need to justify any payment outside of that budget.

3. We would like to see a clear recommendation of reserve funds being invested to maximise deposit interest because if the reserve fund is used correctly for cyclical repairs, then notice periods can be allowed for and interest maximised.

4. Bearing in mind Discrimination legislation and the specific sector there should be an obligation for large print or other alternative means of communication appropriate to the audience.

5. The concept of forfeiture and its current use needs to be explained better and we would strongly suggest emphasis on mediation or other forms of dispute resolution, including if appropriate, debt counselling.

6. Residents' Associations, we feel, have an important role to play and while some members of ARHM actively encourage them, others do not and some only if the managers own RA constitution is used. You should have a link on your website and publicise other alternatives including, FPRA.

We hope you find these comments helpful, and we look forward with interest to the next stage of the process.

Yours faithfully

Richard Williams
Honorary Vice Chairman for FPRA