

Consultation response to ‘Residential Property Management Services: An update paper on the market study’

Competition and Markets Authority

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About this consultation

In August 2014 the Competition and Markets Authority issued '*Residential Property Management: An update paper on the market study*'. This report is an interim market review of property management in the leasehold sector and is accompanied by an Ipsos MORI survey of leaseholders. The main report sets out a range of issues affecting leasehold management and gives a series of recommendations to improve the sector within existing legislation and guidance. Implementation would require cooperation from residential property managers as part of a self-regulatory approach. The review is due for completion by November 2014.

Key points and recommendations

- Age UK believes there need to be further steps towards **improved regulation** to offer better protection to older leaseholders. Self-regulation will be insufficient to curb bad practice and over-charging in parts of the sector. Over the years voluntary **codes of practices** have been designed to eliminate and reduce bad practice by managing agents. These have had limited success in reaching all parts of the retirement housing market.
- There needs to be an overall **improvement in the delivery of advice and information** covering housing, care, and finance. These services play a vital role in helping older people avoid the potential pitfalls of buying leasehold property and enable them to resolve grievances.
- **The support given to older leaseholders should be improved**, to enable them to resolve disputes through **the first tier tribunal** (or alternative system). Many older leaseholders struggle to obtain the required information from managing agents to support their case. Older leaseholders can find the tribunals intimidating, complex and costly without adequate legal representation.
- An **alternative dispute resolution and redress service** is now required to give better legal and financial protection to older leaseholders who wish to make a complaint. This could involve a conciliation stage and a more formal adjudication service linked to an approved code of practice. As with several existing Ombudsman schemes, the decision should be binding on the provider but not on the complainant. Older people should be completely protected from costs, as a result of raising a complaint, but should still have the option of taking further legal action if necessary. The current system is too complex and costly for leaseholders and is skewed in favour of providers, who have access to legal resources.
- Age UK believes that it is impossible to review the operation of the market without considering the **legal framework**. Problems with the leasehold system disempower all residents and increase their costs. The status quo tends to work in favour of providers, rather than in the best interests of residents. There

should be a greater degree of standardisation and clarity in leasehold contracts, especially in the retirement housing sector. Alternatively, the adoption of the commonhold system could offer greater consistency and reduce disputes over terms of contracts.

- We believe the market review should include consideration of why the Commonhold and Leasehold Reform Act 2002 has not achieved all its objectives. The introduction of this legislation was in recognition of problems within the leasehold market and, in part, was designed to prompt **movement towards more commonhold developments**.
- We have concerns that it is particularly difficult to engage with consumers in this marketplace, which creates an imbalance of power between providers and residents. The CMA should give further consideration to how all leaseholders could be afforded greater **influence** over market reforms. There should be proactive engagement to make it easier for older leaseholders to contribute towards the reform of the sector.
- **Older leaseholders may be unaware of overcharging** or hidden costs due to a lack of accurate information. A lack of knowledge may result in high levels of satisfaction, but this should not detract from the need to reveal and challenge unreasonable charges, where they occur. In some cases, it is only after a resident has died that relatives discover bad practice and over charging.
- Older leaseholders need support to enable them to switch managing agents or take up the **Right to Manage**, if it is to become an effective tool for improving the market through greater competition. Most older people want quiet enjoyment of their home with the reassurance that managing agents comply with high professional standards. Relying on competition in the retirement housing sector to achieve reform is unrealistic and distracts from the need for better regulation.
- The CMA should review progress on the role of managing agents in aiding disabled leaseholders to use or benefit from scheme facilities, as part of their obligations under the **Equality Act 2010** and current codes of practice. This should include consideration of progress on the accessibility of common areas, and the use of auxiliary aids or services - as well as permissions for adaptation within the home. Market progress on adequate support for older leaseholders with restricted mobility, is an important issue across all forms of leasehold as well as retirement housing.
- The Ipsos MORI survey does **not give a complete picture of the experience of older leaseholders** living in retirement properties. This evidence needs to be put in the context of other previous OFT investigations, court records and

casework statistics available from advice agencies. The survey on its own should not be used as the basis for any policy decisions affecting older leaseholders.

Introduction

Age UK welcomes many of the practical recommendations set out in the CMA's interim report. If implemented they would achieve considerable improvements for all leaseholders.

Age UK previously consulted with a panel of residents looking at retirement housing, resulting in our '*Making it work for us*' report (2012). This gives a good indication of some of the key issues for older leaseholder and reflects other comments and complaints we have received. In addition, our recent report '*Housing in Later Life*' sets out broad recommendations for overall reform of the retirement leasehold sector.

We are concerned that the CMA recommendations do not offer sufficient protection to older leaseholders, who can be more vulnerable to unfair or exploitative practices than younger leaseholders. This has already been shown by previous Office of Fair Trading (OFT) investigations, based on evidence submitted by older leaseholders. The CMA recommendations on improving standards, by making it easy to switch managing agents, are unlikely to improve the retirement housing sector. Although older residents may be keen to switch, with the appropriate advice and information, many others want quiet enjoyment of their home, with the reassurance that their provider is expected to adhere to high professional standards.

It would be a particular problem if the CMA recommendations resulted in higher charges for older leaseholders. Managing agents may argue that increased self-regulation will incur higher costs which will need to be covered by charges. However, many of the suggested reforms should be offered as standard by property managers as part of providing a professional service.

Fundamentally, the leasehold system itself creates many of the ongoing problems linked to property management disputes and results in an imbalance of power between leaseholders and managing agents. The legal complexity and lack of consistency in leasehold contracts makes older people vulnerable to poor advice on finance and conveyancing, which may affect care and support options later on. This complexity could be addressed by a degree of standardisation in contracts, directly linked to legally prescribed information contained in the purchaser pack. A shift to the commonhold system would also allow a greater degree of contract standardisation. Information and contracts in retirement housing should be helpful to older people in considering their future requirements – such as the scope for adaptations and delivery of support services.

Inherent problems with leasehold were recognised in the Commonhold and Leasehold Reform Act 2002. This legislation was intended to reform the market by prompting a shift away from leasehold for new home developments. The CMA should review why this shift has not happened.

Levels of satisfaction among older leaseholders

For many older people buying a retirement property is a positive choice. It is not surprising that many older leaseholders are happy living in this sector. There is a general agreement that more retirement housing options should be available to older people who wish to downsize from large family homes. In our view, this makes it all the more important that the retirement housing market is adequately regulated to protect the interests of older consumers and to engender greater consumer confidence in the market. A higher level of regulation in key areas could contribute to its expansion, rather than impede it.

The Ipsos MORI survey shows high levels of satisfaction among older leaseholders – but does not fully reflect all parts of the retirement leasehold market, based on the evidence of previous investigations. The CMA should place this survey in the context of other key evidence, including previous complaints, court records and advice agency statistics and case studies. We would be happy to share recent case study information illustrating ongoing problems and issues.

Examples from Age UK information and advice services

'C is in the process of selling her Mother's flat, who is deceased. Her mother's flat is a leasehold property. C is going to have to pay exit fees to sell it, and has also had to pay a service charge to receive info about what the service charge was spent on. C has read a lot of info online about possible changes to management companies charging exit fees - but can't see if there were any results for this.'

(Ongoing concerns about the operation of transfer fees)

'C lives in a one bed retirement flat. The service charge has more than doubled. C has repeatedly requested a breakdown of service charges but still has not received information explaining the increase.'

(Difficulties with obtaining information on charges in a clear format that residents can understand and challenge.)

'C is considering moving from her property, into a leasehold retirement property. C states that, in the contract for the new property, there is reference to a 'sinking fund', charged annually at the rate of 1.4% of the property price. C wants to know if this is the norm in leasehold.'

(The CMA is right to conclude that a lack of information prevents older people from comparing costs and charges – resulting in anxiety and confusion.)

Evidence of problems

Over the years, the OFT has collected evidence showing that significant numbers of older leaseholders have experienced problems with the operation of the market. A single challenge by an individual resident often alerts others who were previously unaware of a problem. Problems may only come to light as the result of a specific issue, such as financial dispute - or with the intervention of relatives and friends.

Older leaseholders can be vulnerable to poor advice, exploitation, and unfair treatment – especially if they are isolated and do not have support from family or friends.

Many older people struggle to obtain independent and reliable information and advice about purchasing decisions or to deal with complaints. It is unrealistic to expect a significant number of direct complaints to the CMA from older leaseholders, given that many are unaware of the CMA or may, for various reasons, not be in a position to complain. Regardless of this, the CMA interim report has accurately identified many of the common problems, which have been raised with Age UK by residents and residents groups that reveal continued patterns of bad practice in parts of the sector.

Association of Retirement Housing Managers (ARHM) Code of practice

Over the years the retirement housing industry has made various commitments to improve standards in the sector. The majority of managing agents provide a good service, but this is not the case for all.

The Association of Retirement Housing Managers code of practice is designed to protect older leaseholders - where managing agents follow its guidance. It is commendable that the code was opened to public consultation in 2013 and that older leasehold residents had the opportunity to comment and suggest amendments. While we welcomed the Code, we are disappointed that it has not yet been published or made mandatory for members of the AHRM. We would like to see statutory backing and compliance monitoring for such a code so that all managing agents are required to comply, whether or not they are members of the AHRM.

There are limited penalties for ignoring the ARHM code and few resources to follow up complaints. Ignoring the code can offer some managing agents the opportunity to gain a competitive advantage by hiding or misrepresenting their costs. The threat of a managing agent being taken to a first tier tribunal is insufficient to discourage some from looking at ways of unreasonably raising profits at the expense of the leaseholder.

The proposals to bring together the ARHM code with ARMA-Q, may improve clarity and help to promote best practice across the sector, but on its own this is unlikely to be enough.

Although key players in the sector have made a public commitment to follow best practice, older leaseholders should not have to rely on the good will of the industry to be assured of best practice and guaranteed standards. We are concerned that without a stronger legal framework there would be a danger of the providers slipping back into bad practice, particularly as a result of changes in ownership, without improved regulation. Therefore, Age UK believes that the remit of the CMA should still include reform to the legal framework, setting out the pro and cons for consideration by legislators.

Ombudsman service

The CMA report highlights changes in the law requiring all managing agents to be members of an approved redress scheme. This could ensure that all managing agents are required to comply with a linked code of practice - which we support. All managing agents should automatically belong to the Housing Ombudsman service. There is an argument for this service to have a stronger role as part of a reformed dispute resolution service – designed to be more accessible to older leaseholders than the current arrangements. It is significant that membership of an approved redress system required legislative measures, because not all managing agents are prepared to voluntarily join the such a scheme. Stronger redress should be tied to an approved code of guidance which has legal backing.

Transfer fees

Age UK believes that charging of fees must be based on the reasonable costs of delivering an identifiable service. Following the previous OFT investigation a compromise solution was reached, mostly removing transfer fees for new letting. The settlement has benefited many older people, but has not eliminated the problem for all leasehold contracts in the sector. Although we would like fees completely removed, a further compromise would be to enable first tier tribunals (or an alternative agency) to adjudicate on whether fees are reasonable as suggested by the OFT study.

Resale

There appears to be a growing number of cases of older leaseholders or their friends and family who are finding it difficult to resell retirement properties. Although this partly reflects the current economic climate, we would like the CMA to consider the role of managing agents in the sale of properties and levels of charges for the administration of sales. This issue also relates to fees and restrictions on subletting. We think it would be useful to examine whether problems with resale are growing - related to the operation of the market and the impact it is having on older people, who may need to move to accommodation offering a higher level of care and support.

Switching managing agents

We agree that making it easier for leaseholders to change their managing agents or to establish a Right to Manage Company could lead to significant improvements in the operation of the sector generally. However, some older leaseholders may find it difficult to engage in this form of intervention.

Many leaseholders will feel that they do not have sufficient knowledge or information to actively intervene in the management of their property. As part of Age UK's inquiry into retirement housing, some residents took the view that Right to Manage could significantly lower service charges and wanted to encourage other leaseholders to take up the opportunity. However, there was also a view that this was more likely to happen where residents had a professional background in management, finance or

accountancy. Although some residents might be interested in the idea of Right to Manage they may not have the confidence or experience to take this forward and would therefore be disadvantaged.

For resident choice to become an effective tool in improving the retirement housing market there would need to be additional support and advocacy for older leaseholders who wish to switch managing agents. There needs to be a more proactive approach to ensuring that older leaseholders are aware of the options and advice material supporting this.

Information, advice and advocacy for older leaseholders

Advice and advocacy have a key role to play in protecting the rights and interests of older leaseholders. The current system tends to work in favour of managing agents, rather than leaseholders. Older residents pursuing a complaint can struggle to obtain the necessary information from the managing agent. They may not have the resources to take a case to its conclusion, regardless of the merits of their case.

At the same time, managing agents often demonstrate that they are prepared to use significant legal resources to defend their interests. The ability of managing agents to recover the cost of legal action through service charges or administrative fees may deter residents from making a complaint – despite existing legal protection afforded to leaseholder over costs. In addition, forfeiture provides managing agents with an extreme measure to recover charges where they are awarded costs and the leaseholder is unable or unwilling to pay as the result of a dispute.

Legal support for leaseholders

We would like to see improvements in the availability of services designed to help older leaseholders. Any service offering conciliation and mediation would have to have a neutral role and enjoy the full confidence of residents. While we recognise the important work of LEASE, its role in providing legal advice to both providers and leaseholders is problematic in terms of reform. Although leaseholders may gain some benefit from accurate and comprehensive legal advice, offered by LEASE, they may not have the financial ability to take legal proceedings to resolve their dispute and therefore obtain less benefit from the advice, compared with managing agents. Offering leaseholders advocacy and mediation services and/or a reformed system of dispute resolution – with protection for the leaseholder from costs - would allow a fairer balance of interests.

Dispute resolution service

We would like to see a reformed dispute resolution service offering a conciliation stage before formal adjudication, based on an approved and enforceable code of practice and with no costs to the leaseholders. This would help leaseholders avoid protracted and costly legal proceedings all together. It would need to be offered in the context of stronger regulation and the ability of leaseholders to take further legal action if a resolution cannot be achieved. A successful dispute resolution service

needs to be neutral and independent and have the confidence of both managing agents and leaseholders. There could be a redeployment of existing resources to support this kind of reform.

Greater standardisation of contracts

The CMA acknowledges the confusion and difficulties associated with leasehold contracts. Given that a few older people will have had previous experience of living in specialist leasehold housing, it would be worth highlighting key elements of the contract that are particularly important to older and disabled people e.g. adaptability and lift maintenance. Although the remit of the review is not to look at the legal framework we think this is a critical aspect of how the market operates and therefore cannot be left out.

Role of Commonhold in achieving market reform

The leasehold system, which is specific to this country, has over the years created many of the legal complexities encountered by older leaseholders. Age UK would like to see a move towards the type of systems seen in the US, Australia, and parts of Europe. Promoting this system was part of the intention of the Commonhold and Leasehold Reform Act 2002. Given that this legislation was designed to benefit residents and address some of the market problems associated with leasehold we would like the CMA to investigate why this has failed to be adopted by providers.