Government Consultation in Tackling Unfair Practices in Leasehold

Response from Association of Retirement Housing Managers (ARHM)

The ARHM represents management organisations who together manage around 90,000 private leasehold retirement properties in England, Scotland and Wales. The Association is committed to high standards and ethics in the management of private sheltered housing and in the provision of services to residents.

The ARHM is pleased to comment on the White Paper as follows and in line with the issues raised and would be happy to discuss our response further with DCLG.

Q5: What steps should the Government take to limit the sale of new build leasehold houses?

- We presume that primary legislation will need to be passed if any changes are to be introduced to limit this and that the exceptions will be as listed above. The basic premise of the consultation seems to rely on the perception [through the press?] that builders/developers are mis–selling or mis–representing what they are selling. We would advise taking note of the respondents to this consultation exercise as there are wider reaching circumstances where leasehold houses/bungalows are necessary.
- Consideration needs to be given to the definition of 'new build' and 'house' Anything other than a definition which limits the sale restriction to genuinely newly constructed single dwellings will have unintended consequences and will for example, stop developers from being able to manage properties on estates with shared services
- What is meant by "new build"? Does it include conversion from flats to houses or offices to house? There does not seem to be a statutory definition of "new build"
- What is meant by "house"? The suggestion seems to be that the definition of "House" from the Leasehold Reform Act 1967 is used – however that definition is not satisfactory as there still seems to be much case law arising from that definition.
- Further, to what extent would it apply to buildings comprising mixed use buildings or derelict buildings?

Where leasehold houses and bungalows are sold they should be on the basis of a 999 year lease and Ground Rent should be a peppercorn.

This effectively means that a 999 year leasehold gives the developer the means to include the covenants necessary to provide for the management of a development but in a way that is not detrimental to the leaseholder.

Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?

Where there is a level of shared services across the development or where there are restrictions on ownership, such as age on a retirement development

Where the development is a specialist development, such as extra care, and the services to new owners needs to be managed through the covenants in the lease.

Where a developer only has a leasehold interest – how are they going to be able to sell house as freehold?

Where there is shared ownership.

Historically new estate houses have been sold on leasehold rather than freehold due to the greater ease to enforce covenants and provide for maintenance and recovery of service charges. Enforcement of freehold covenant is very problematic.

In heritage areas and managed estates there are good reasons for selling as leasehold including restrictions on alterations, consistency with external decorations etc that affect the external appearance.

Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.

No

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.

ARHM does not consider that we have sufficient data to respond as to the comparable figures between freehold and leasehold new builds but anecdotally leasehold new builds appear to be increasing. Our observation is that developers, in circumstances that do not fit the exceptions given, have no reason to grant leasehold over a freehold (given that they are then willing to sell on the freehold at a later date) other than to receive a further premium from the buyer, or sell on the freehold interest to a speculative buyer after the event. Unless there is a valid reason for granting a leasehold tenure, we suspect that developers will simply revert back to building freehold houses. Where land value is at a premium then we suspect they will maximise the footprint of the development and consider building leasehold flats anyway.

A further observation, landowners in prime central London may decide, rather than "lose" the freehold, they will start renovating houses for the rental market instead of selling. Is the question more about whether the effect on supply would be 'material'.

Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal or peppercorn ground rent), and if not, why not?

ARHM is not sufficiently familiar with the context but observes that it would seem to be unfair to provide protection for one group who have access to the Help to Buy scheme but nothing for those simply buying on the open market without assistance.

Could developers who may be abusing the system be monitored through the registration system.

Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?

As Q9, it would be inequitable to offer to protection to one group and not another.

Q6 gives details of exceptions where leasehold houses should be allowed.

Leasehold houses can be justified where the developer is not just simply including unfair ground rents and event fees – these alone will negate the positive effect of the Help to Buy scheme for the purchaser.

Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses?

As Q9

Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?

ARHM considers this to be more of a question for developers and not one within our remit.

Q13: What information can you provide on the prevalence of onerous ground rents? We are keen to receive information on the number and type of onerous ground rents (i.e. doubling, or other methods) and whether new leases are still being sold with such terms.

What does "onerous" mean? In this context, it is more likely to be when the rent payable has a material impact on the capital value of the lease

Different types of ground rent patterns:

- Fixed increases i.e. £100 rising to £200 in the second 33 years; £300 for the next 33 years etc
- Rent £180 doubling every 10 years
- Rent review by reference to RPI

Q14: What would a reasonable ground rent look like, in terms of i) the initial annual ground rent, ii) the maximum rate of increase in annual ground rent, and iii) how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.

If this is viewed on the premise that ground rents are simply a landlord privilege that is not actually earned in any way, then it is right that the DCLG is considering restricting them to a peppercorn only. If this question applies to new leases-only then we are not sure that any ground rents are reasonable.

However ground rents may be used to allow developers to reduce the initial capital sale premium, so abolishing ground rents may have an unintended consequence of inflating initial sale prices.

In terms of a reasonable ground rent, one with a review that does not have a material impact on the capital value of the lease; what may be considered onerous at the start of a lease term may then be considered onerous at review, middle or end of the lease.

Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain.

The solution needs to be equitable and exemptions should not simply apply to differentiate, say, the social sector and the private sector.

In terms of shared ownership leases, by their nature will need to retain a rent.

Consideration should also be given to lease extensions under the Leasehold Reform Act 1967, mixed use properties and occupational leases granted out of a head lease which reserves rent.

Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.

See Q8 & 14

Q17: How could the Government support existing leaseholders with onerous ground rents?

Extremely difficult to resolve. There may be opportunities to recompense individuals through a mechanism similar to the PPI issue but more difficult in respect of investors.

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

One option could be to follow the same process that the Law Commission suggested for event fees and make it compulsory to declare up front.

Other considerations, a Code of conduct for housebuilders which deals with terms on which leases should be granted and the Council of Mortgage Lenders setting down a criteria on what lease terms are acceptable and those which are not.

Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?

ARHM considers that in principle a leaseholder paying a premium for a long lease should not be vulnerable to mandatory grounds for possession. Amending Ground 8 to state that it would not apply in a case where the lease is for an original term of more than 21 years could remedy this but that does not deal with a landlord gaining possession under ground 10 and 11 for non payment by the tenant.

Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?

This would seem fair and sensible just as long as the freeholder/management company has the same rights to recover service charge that they do against leaseholders.

Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

ARHM observes that this consultation has happened very quickly on the back of issues being raised about first-time and young families entering into leasehold purchases in the last 9 to 12 months, whilst the 2014 CMA report (- and before it the OFT) and the subsequent Law Commission investigation into Event Fees has been drawn out over several years; the Law Commission study not yet being concluded. ARHM considers that there is a wider issue to address of older people being marginalised and becoming easy prey for unscrupulous operators in the leasehold retirement sector.

There is a rationale for event fees where it helps to spread ongoing costs and creates an affordable business model. However, in reality, they are exploitative by some landlords and they need to be linked into some form of service where the reasonableness of that service

can be challenged. Why not take a step back, rather than what appears to be a knee jerk reaction, and tackle all the suspect-practices, which includes ground rent and event fees. It is interesting to note that that questions regarding the impact on the market were never asked when looking at retirement properties and the practice of event fees – we consider that shows the value attached to younger buyers over older buyers.

ARHM also suggest a review of commonhold be instigated to review why it has failed so far and what needs to be done to make it effective.

ENDS