

## Putting Retirement Housing In Order

This document replaces the version of the report issued on 4<sup>th</sup> October 2010. The previous document contained inaccuracies and should be disregarded.

### **CORRECTION**

In our report "Putting Retirement Housing in Order", published on 4 October 2010 we referred to Peverel and Fairhold without making it clear that the issues covered by the report apply across the retirement housing sector. We would like to make clear that our comments did not only apply to Peverel and Fairhold and we apologise for any confusion caused by our comments.

We stated that both Peverel and Fairhold are part of the Consensus Group. This is not accurate, although Peverel, Fairhold and Consensus Business Group share a common beneficial owner.

We also stated that a spokesperson for Fairhold called complainants "dribbling geriatrics", repeating reporting by the Daily Telegraph which was subsequently corrected. We accept that the spokesperson did not refer to complainants as "dribbling geriatrics" and we apologise for this error.

In respect of transfer fees, our report could have been understood to suggest that Fairhold charges transfer fees of much more than 1% and that those transfer fees relate solely to administrative costs. We accept that this is not true. In fact, Fairhold charges transfer fees of 1% whilst other providers charge fees in excess of 5%.

The report could also have been taken to mean that Peverel does not operate a competitive tendering process and that all of the disputes we have dealt with over the past three years concern Peverel's services, which is not the case.

With regard to the regulation of this sector, we accept that Peverel and Fairhold have long been involved with the drive to improve regulation across the leasehold sector and that they welcome further regulation of the sector.

# Putting Retirement Housing In Order

## BACKGROUND

There are around 200,000 older people living in the private retirement housing sector. Many residents and their relatives are becoming increasingly concerned about what they see as unreasonable and unjustifiable charges made by some landlords and managing agents. Recent attention has focused on companies who have been ordered by the Leasehold Valuation Tribunal to repay unreasonable charges. A complaint was also made to the Office of Fair Trading concerning the fairness of leasehold contracts requiring a transfer fee of 1% on the sale or sub-letting of a lease. The company concerned agreed to remove the transfer fee from any new leases and to waive the charge in any existing leases, but this agreement was not enforceable against the property company that had already purchased the bulk of the freeholds. In other cases transfer fees can be far higher than 1% and often represent very substantial sums. A final ruling from the OFT on the inclusion of transfer fees in leasehold contracts is still awaited (and which in any case is likely to be subject to legal challenge by providers).

AgeUK receives many calls and letters from older leaseholders asking for help to resolve disputes and to pursue complaints. These calls are confidential, which makes it difficult for us to print specific case study examples. However all the points made in this briefing are based on the direct experiences of older leaseholders. We have received evidence that some landlords and managing agents are continuing to take advantage of lack of regulation to profit from unreasonable charges. Many landlords rely on these additional charges to help make schemes financially viable. Although a number of residents have approached AgeUK directly it seems likely that many other leaseholders are unaware of unfair charges, or seek legal redress themselves through a solicitor.

There is a code of practice issued by the Association of Retirement Housing Managers (ARHM) which advises members on best practice in the application of charges. However ARHM has no regulatory powers and relies of the cooperation and good will of its members. There is evidence that some members are ignoring ARHM advice, which brings into question the value of their role in the regulation of the sector. Many landlords and managing agents are not members ARHM or the Association of Residential Managing Agents (ARMA) and so are answerable to no-one.

## Extent of the problem

It is difficult to assess the extent of unfair service charges or problems specifically related to transfer fees. AgeUK deal with a regular flow of inquiries related to charges, Over the last 3 years the charity has dealt with 46 cases that are likely to be related to transfer fees (with implications for all residents within those particular schemes). We have also dealt with 373 cases related to disputes over service charges. Our information and advice service has taken an impartial role in negotiations between managers and residents over fair levels of service charges. AgeUK is currently working with CARLEX, a group representing residents living in retirement housing. The issues highlighted by CARLEX indicate a much wider problem which could have implications for the whole retirement housing sector.

## ISSUES

### Service charges and affordability

Part of the reason we are seeing an increase in the number of complaints on service charges relates to the more general issue of the affordability of retirement housing. Increasing numbers of leaseholders are struggling to sustain their accommodation with increased costs – such as utility bills and council tax – combined with escalating service charges. Ideally, older people on fixed incomes moving into retirement housing want yearly charges will be set at a fair and stable level over the long term based on clearly defined principles.

Although wealthier older people on higher incomes may be able to cope with significant increases in charges, those on moderate incomes are more likely to be forced out of the sector. **Fewer older people are likely to leave larger family housing if the options available to them become increasingly unaffordable.**

### Our position

- Older people considering a move to retirement housing need better advice and information on the likely long term financial obligations of leases so they can make an assessment of the affordability of a scheme before moving in.
- There should be a limit on the level of management service charges and landlords should adhere to industry guidance on the setting of charges.
- There must be greater transparency for service charges. Landlords should adhere to their obligation to provide a summary of services with a financial breakdown of service charge income and expenditure within six months of the end of the accounting year.
- There should be a legal requirement to consult on budgeting for the year ahead following recommendations in the ARHM code of practice.

- The ability of leaseholders to challenge unfair charges though the Leasehold Valuation Tribunal needs to be faster and easier, with access to advocacy and mediation services.
- If there are additional charges of benefit to all leaseholders, such as contingency fees, these charges need to be made clear to prospective purchasers, before they take up the lease. There must be transparency over what the fees cover and how they may change over time.
- There should be stronger regulation to ensure providers follow the code of practice established by the Association of Retirement Housing Managers (ARHM).
- AgeUK would like to see an independent consumer review of the retirement housing sector to examine how residents can be better protected from financial exploitation.

### **Transfer fees**

When leaseholders sell or sub-let their accommodation, they may be required to pay a transfer fee to the freeholder. These fees can be considerable, although the administrative cost to the managing agent is negligible. Transfer fees are often part of the leasehold agreement that residents sign up to when they move into a scheme. Someone inheriting a flat may find it impossible to sell in the current economic climate, but still have to pay a fee. If they sub-let, the transfer fee is payable, although it may cancel out any rental income. If the tenant leaves, so that the leaseholder has to let the property to a new tenant, the fee is payable again. Assignment where the property is left to an unmarried partner, carer or friend, means that some-one, perhaps a grieving partner, would still be liable for the transfer fee. CARLEX are challenging whether the fee is a reasonable requirement for leasehold contracts. They have taken the complaint to the Office of Fair Trading under the requirements of the 'Unfair Terms in Consumer Contract Regulations'. They are still waiting for a final adjudication which is like to be subject to legal challenge by the retirement housing sector. The OFT can give informed advice but cannot determine that a term in a lease is 'unfair', only a Court can decide that.

### **Our position**

- All leaseholders should have access to independent expert advice before buying retirement housing. In future there should be clear and prominent notification on the leasehold documentation that residents should seek legal advice before signing an agreement.
- Transfer fees on the sale and reassignment should be **abolished**.

### **Insurance premiums**

The Office of Fair Trading is investigating residents' claims that insurance premiums are being inflated as a result of commissioning fees being shared between landlords, brokers, and managing agents. Residents contend that there is no incentive for landlords to lower the fees as the costs are passed onto them through higher service premiums.

### **Our position**

- Landlords and managing agent should comply with existing obligation to consult on insurance policies over a certain value. This principle should be applied to all policies, regardless of value. Leaseholders should have full details of the costs and benefits of the scheme. There should be full disclosure of any commission fees on any insurance policy taken up.
- Any commission made on insurance should be used for the benefit of those living in the scheme covered.

### **Anti-competitive practices**

Leaseholders have concerns over the lack of competitive tendering for services to ensure that residents get the best possible deal. Landlords often operate a monopoly by allowing their own or related companies to control in-house service delivery. Despite a legal obligation to obtain competitive quotes landlords may use contractors with whom they have a business interest without disclosing that interest. Carlex specifically refers to the installation of monitoring services in schemes where the company concerned had undisclosed business connections with the landlord. Residents also quote examples where the managing agents are profiteering from an undisclosed arrangement with a contractor, resulting in inflated charges to residents. Residents and their relatives have only been able to eventually identify the links between landlords/managing agents and contractors by using their own time and resources. Following complaints Age UK is aware that at least one managing agent has subsequently changed its practice and now outsources its tendering process to independent surveyors.

### **Our position**

- There must be stronger regulation to ensure that providers adhere to existing legal requirements and the Association of Residential Managing Agents (ARMA) code on competitive tendering.
- Landlords and managing agents must comply with legal obligations to obtain an estimate from a contractor with no links to the landlord. Existing requirements should be enforced to ensure landlords disclose details of any financial links with contractors making bids for the supply of services.

- The right of residents to put forward a contractor of their choice should be enforced. Residents should have the opportunity to determine the appointment of contractors based on a full disclosure of costs and bids.

### **Cost of scheme managers flats**

Some schemes provide accommodation for a residential scheme manager. However, the charge for the scheme managers flat may be much higher than the market rent for a local area. Residents are concerned that this inflated cost is then passed on to residents in service charges. In full LVT decisions can go either way and the LVT will not necessarily reduce the rental charge to an average market rent for the area, size and quality of the accommodation. Some evidence suggests that the LVT will allow the upper end of the market rent they believe can be achieved.

### **Our position**

- There should be a limit placed on the level of rent a landlord can charge on scheme manager flats and this should not exceed market levels.
- Leaseholders should (where the lease allows) collectively be able to determine the presence of an onsite manager and the necessity of the service provided.

### **GENERAL OVERVIEW**

- We are calling on the Government to review the regulation of the retirement housing sector to reduce financial exploitation under the current system.
- Reputable providers welcome regulation because it would improve the reputation of the sector and address the fears of many prospective leaseholders
- We support the growth of retirement housing and would like to see some relaxation in planning regulations and costs which are currently restricting new developments.
- Retirement housing has a key role to play in stimulating the housing market by freeing up larger family size homes.
- We would like to see the abolition of transfer fees and a limit placed on management service charge increases.
- We want all prospective leaseholders to have access to expert legal advice and information before signing contracts.