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Residential Property Management Services: Market Study

I am writing on behalf of DCLG and the Ministry of Justice (MOJ) in response to the market study into residential property management services carried out by the Competition and Markets Authority (CMA) as it applies to England, the outcome of which was published on 2 December 2014. I understand that officials from my Department and MOJ have worked with your organisation throughout the study.

I welcome the study, which is a useful addition to the debate about property management services in the residential leasehold sector. I am also pleased to note that overall, the study supports our existing policy position that a targeted approach to improvements is appropriate, rather than fundamental and wide ranging reform of the existing leasehold framework.

We have already been working on a number of areas before publication, which the study helpfully picks up, for example recommendations relating to Codes of Practice approved by the Secretary of State. Competition is of course a positive thing, and I appreciate that this study has looked at this issue from that perspective, to see how and where improvements might be brought about.

The market study helpfully identifies its recommendations in five key areas, and I will respond to each of those, where England is concerned, in the attached annex. The Ministry of Justice leads on policy relating to the First-tier Tribunal and fully supports my response with regard to recommendations relating to the tribunal. The Welsh Government has devolved responsibility for housing issues and I understand your organisation is liaising directly with them.

I agree that improvements can continue to be made in the provision of property management services and we will be taking forward the vast majority of your recommendations. It is helpful that you recognise in the report that taking forward some of the recommendations will depend on securing a slot in the next Parliament or beyond. We look forward to continuing to work with you and other stakeholders to determine in what form the recommendations may best be given effect.

I understand that your organisation will be setting up a joint steering group made up of officials from my Department, MOJ, BIS, HMT and the Welsh Government, to meet on a quarterly basis and review the progress being made in respect of the recommendations in the report.

BRANDON LEWIS MP

Annex

Introduction

Leasehold is a particular type of home ownership where both landlord and leaseholder retain a long-term legal and financial interest in the same property, where those interests can be quite different, and often conflicting. This relationship is therefore very different from the normal consumer/supplier relationship. It is equally important to understand how the tenure works in the context of the lease, which as the study recognises, is the legal agreement setting out the rights, responsibilities and obligations of the landlord and the leaseholder.

1. Pre-purchase remedies

Develop and provide guidance to prospective purchasers

We accept these recommendations and agree that awareness of what being a leaseholder means before someone buys a residential leasehold property is important.

You may be aware that in a news release on 12 August 2014, the Secretary of State announced that this was one of the areas that we would be looking to take forward. We have been working closely with the Government funded Leasehold Advisory Service (LEASE) on this issue prior to publication of the market study.

In the short-term this has resulted in the development and publication of a quiz and advice guide on the LEASE website to assist prospective leasehold purchaser and others, which has been well received by users.

We have asked LEASE to lead on the development of an information sheet for prospective purchasers to enable them to make an informed decision. They will be working with the relevant bodies representing professionals in the sector and those representing the interests of leaseholders. The first meeting should take place by the end of April. This is ongoing and may also include for example, improved education/training for estate agents.

BIS, as the department responsible for estate agents involved in the buying and selling of property, will engage with the Property Ombudsman (TPO) concerning how the TPO Code of Practice can focus on the particular requirements of estate agents in respect of the disclosure of information relating to leasehold property.

Develop standard questions for use during the conveyance process.

We accept this recommendation and as recognised by the CMA study, a standard set of questions applicable to residential leasehold property is already available (i.e. form LPE1 developed and published by the Law Society). This form was reviewed by the Law Society in 2013 and revised with the assistance of those with an interest in the leasehold sector, to ensure that relevant and appropriate information is provided when using the form. I note that the recommendation that wider adoption of form LPE1 should also be supported by the Council of Mortgage Lenders (CML) and that this is something that the CMA will take up directly with the Law Society and the CML.

The Leasehold Advisory Service as DCLG's arms length body stands ready to assist should the Law Society revisit the LPE1, in respect of providing advice and information in relation to residential leasehold LEASE will keep us informed of their progress in this area.

2. Remedies to improve transparency and communication – Codes of Practice

We accept the recommendations and will work with the CMA and the relevant Code Owners to identify how the relevant recommendations can be implemented via their statutory Codes of Practice. DCLG and the CMA are already working with RICS in respect of their code.

The following Codes are approved by the Secretary of State under the Leasehold Reform, Housing and Urban Development Act 1993 in respect of the residential leasehold sector in England:

The Royal Institution of Chartered Surveyors (RICS) – Service Charge Residential Management Code.

The Association of Retirement Housing Managers (ARHM) – Private Retirement Housing Code of Practice.

The Codes specifically apply to anyone managing property in the private residential leasehold sector, but in particular managing agents. It is important to ensure that the content of these Codes of Practice set out appropriate, challenging and workable best practice.

The common commencement dates are April and October. We are confident that the revised ARHM Code will be approved by April 2016. The RICS Code has not yet been received by DCLG so the earliest it will be approved is April 2016.

ARMA-Q: These are the revised standards that will apply to Association of Residential Managing Agents (ARMA) members only. It is a welcome addition by the sector to improve management standards within the leasehold sector through self-regulation. It is not however, something that has been approved by the Secretary of State in the same manner as the Codes referred to above.

The study also refers to a charter published by the Association of Retirement Community Operators (ARCO). This is also not a document that has been approved by the Secretary of State. The CMA would therefore need to take up any recommendations it may have in respect of this and ARMA-Q, direct with the relevant organisations, but DCLG will continue to work with Code Owners on CMA recommendations relating to the Codes of Practice approved by the Secretary of State.

We will work with the sector to encourage the continual development of the non-statutory codes/standards. I will write to the relevant owners of the non-statutory codes and industry standards to ensure they are aware of the work being done to reflect the CMA recommendations in the statutory codes. I will encourage them to carry out similar work in relation to their own codes and standards.

3. Redress Remedies

Provision of either:

- *independent advice to parties about the merits of a case, or*
- *some form of cheaper and quicker alternatives than taking claims to the First-tier Tribunal (E.g. early neutral evaluation, mediation by LEASE or the FTT, or other) separate from the FTT.*

We accept the recommendations and agree that access to redress is important. Free, independent initial legal advice and information on residential leasehold law and the rights available is already made available by Government through the Leasehold Advisory Service (LEASE) – as the study recognises.

DCLG has also introduced the requirement (from 1 October 2014) for property managers in the private sector to belong to one of three Government approved redress schemes. The ability to take a complaint to the redress schemes gives leaseholders the ability to have a large number of 'low-level' issues resolved. Access is at no cost to the leaseholder, and means that they would not necessarily have to resort to the Tribunal system in the first instance, as a first resort. It is too early to say what impact the redress schemes will have on standards and behaviour in the sector.

In addition I have been considering how best to ensure residential leaseholders are made aware of their right to seek redress from the relevant redress scheme, where a dispute or complaint cannot otherwise be resolved. Consultation will commence shortly on a number options, including amending the prescribed content of the existing summaries of rights and obligations that is already sent to leaseholders, to include a message about the redress schemes.

1. **Mediation.** Both DCLG and MoJ agree that early resolution of a dispute can potentially minimise the impact on users, not just financially but in terms of the time and emotional stress that an extended dispute can generate. The Ministry of Justice, through Her Majesty's Court and Tribunals Service (HMCTS), has responsibility for the First-tier Tribunal (Property Chamber) and my officials are working closely with them to consider what further improvements can be made for early dispute resolution in the Property Chamber.
2. The Administrative Justice and Tribunal Strategic Work programme already outlines MoJ's commitment to ensuring that mechanisms are in place to enable disputes to be resolved at the earliest possible opportunity including better signposting to mediation services. This may also be an area that the independent Administrative Justice Forum could offer advice on.
3. The report also talks about the mediation service that has been offered by LEASE in the past. My Department has asked LEASE to consider whether early intervention mediation could be offered as part of an expanded commercial model. It would not be possible for this service to be offered free of charge. We will be meeting with MoJ officials and LEASE shortly to see how we can incentivise the take up of mediation in

property disputes, drawing on other examples across the tribunal system. MOJ and DCLG will provide an update on progress in 12 months.

4. Remedies requiring regulation/legislative change

The timetable for implementing any new legislation or changes to existing legislation will also be dependant on parliamentary time in the new Parliament and the priorities of the next Government.

New legislation to give leaseholders rights to trigger re-tendering; and rights to veto the landlord's choice of property manager

The CMA is concerned that leaseholders may have limited influence or effective control over the quality, price or service of a property management company appointed by the landlord. However, we consider that there are strong policy reasons for not introducing this particular recommendation **as drafted**. We believe that raising awareness of the existing rights and protections leaseholders have, including access to redress, is the short-term priority.

In the spirit of the CMA's findings, we will make a commitment to set up a cross sector working group to understand the evidence that has driven this particular recommendation and consider both legislative and non-legislative options to increase competition without adding disproportionate burdens and costs. The group will be made up of professionals from across the sector as well as organisations representing the interests of leaseholders. We commit to report back to the Competition and Markets Authority (CMA) on progress within 12 months.

Review of section 20 rules (consultation with leaseholders in relation to qualifying works)

£250 trigger for qualifying works (index-linking and tiered approach).

We recognise that the trigger for qualifying works of £250 has been in effect since the new consultation arrangements came into effect in September 2003 and has not been increased since then.

We agree that this is something that could usefully be considered. This would require secondary legislation to implement and this is something that we will give further consideration to as part of looking at priorities for the next parliament and beyond.

Section 20 consultation process

We are aware of polarised views in respect of the statutory consultation process, where for example, managers and freeholders would like to be able to carry out consultation of a lesser nature, whereas some leaseholders have indicated they would like to receive much more detailed information. It is also the case that some leaseholders are of the view that they are consulted too often for minor works, which is an area where on occasion leaseholders and freeholders agree.

We continue to liaise with professionals in the sector and organisations representing the interests of leaseholders on what they see as the main priorities for legislative change within residential leasehold. It is clear that they would welcome a review of the Section 20 threshold, as identified in your report and more work is needed to identify what further changes are sought to Section 20. The Association of Residential Managing Agents (ARMA) is hosting a cross sector meeting on 18 March, supported by DCLG officials,

which will kicked off discussions about Section 20. We will also ask LEASE to engage with leaseholders through their Stakeholder Group and discussions groups. We will report back on progress in 12 months.

5. Local Authorities and Housing Association remedies

Local Authorities to develop mechanisms to share best practice

We accept this recommendation and agree that the sharing of best practice is one way of continually improving the standards of service and information in the local authority sector. To ensure efficiency and better knowledge sharing this would be best led from the sector. My Department will raise this initiative with relevant bodies, such as the Chartered Institute of Housing (CIH), National Housing Federation (NHF) and Local Government Association (LGA).

Local authorities and Housing Associations to separate costs of providing ‘common’ services to leaseholders and social renting tenants on a block basis (and explain allocation of costs).

We very much support the transparent publication of service charges and believe a clear and fair apportionment is particularly important.

With local authorities and the HCA, we will look to take forward this recommendation, developing a consultation proposal later this year.

With housing associations, the position is somewhat different. Private Registered Providers are required to produce service charge accounts for leaseholders (details are set out in the ICAEW technical release 03/11). Under the Rent Standard (para 1.7) they are also required to “provide clear information to tenants that explains how their rent and any service charges are set”. The Homes and Communities Agency (HCA) are responsible for the regulation of Private Registered Providers and the regulatory standards. The HCA also need to strike a balance between protecting the organisations and the tenants involved in these arrangements and ensuring they are not placing unnecessary regulatory burdens on the sector. We will draw the report to the Regulators attention, with a view to them considering how they might be able to take forward.