



Leasehold Redress Scheme

This document seeks to outline the needs and potential operation of a FastTrack Redress Scheme.

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The Issue

There are 5,000,000 Leasehold titles registered in England and Wales. An estimated 200,000 incoming leaseholders are charged unreasonable fees and over 60% of all leaseholders experience delays caused in obtaining leasehold information.

The identified issues are:-

- delays in the provision of information required in the conveyancing process
- delivery of reasonable and proportionate administrative charges as required by the Commonhold and Leasehold Reform Act 2002
- transparency of payments for information provided.

Legislation & Case Law

The ¹ Commonhold & Leasehold Reform Act 2002 (C&LRA) requires that administration charges in respect of the provision of information and consents and made by or on behalf of a Landlord should be reasonable.

First Tier Tribunal case law exists from the Lower Tribunal which states that a reasonable amount to pay for the provision and acknowledgement of the Landlord's standard Deed of Covenant.²

¹ Schedule 11 Para 1 of the Commonhold & Leasehold Reform Act 2002 refers to 'administration charges' as only the provision of information or documents by or on behalf of the landlord or in connection with the grant of or application for approvals under the lease.

² Spencer Wade v Orchidbase Ltd [2014] - Case reference CAM/ 42UD/LAC/2014/0003; First Tier Tribunal. June 24th 2014. June 2014 a claim was brought by a buyer after purchase and after having paid for a deed. The amount charged was £300. The landlord also provided its standard form deed. The reasonable amount for all of this, said the Tribunal, should have been £80 and the landlord was ordered to refund the excess. *Holding & Management (Solitaire) Ltd v Norton [2012] UKUT 1 (LC)*; and *Re Bradmoss Ltd's Appeal [2012] UKUT 3 (LC)*—



However, the Tribunal does not have jurisdiction over the majority of lease administration fees eg notice of assignment, deed of covenant etc nor the delay involved in going through the Tribunals is disproportionate to the amounts charged and inappropriate during a sale transaction.

Additionally, the protections are currently only available to a party to the Lease and as such any action by the incoming leaseholder can only be taken after payment has been made to enable the transaction to complete.

Regulator & Trade Association Codes of Conduct

Multiple organisations have comprehensive codes of conduct which include the need for transparent and proportionate charges and for requests to be dealt with in a timely fashion.

RICS, ARMA and ARLA in particular have codes and recommendations as regards transparency and availability of information³ and the proportionality of reasonable fees⁴. However, trade associations are not able to deal with complaints about their members and these must be dealt with via an ombudsman scheme.

However, these codes only relate to members of their scheme.

Existing Ombudsman schemes require the completion of a complaints procedure, or for the complaint to have been ongoing for more than 8 weeks, prior to considering the case and the Scheme processes take around 28 weeks which is not fit for the purpose of a sale transaction.

Currently, only Managing Agents are required to register with a redress scheme which means that there is no enforcement option available to a consumer during the sale process other than the First Tier Tribunal.

Other Considerations

Consideration should also be given to problems experienced in connection with the arrangements for Freehold properties on managed estates which are not covered by the C&LR and are excluded from ARMA Q.

The sales process is often the same as for leasehold properties in that the buyer's lawyer will require information on the payment of service charges and management and insurance of the estate. These operate via Deeds of Covenant in place of a Lease but which often contain similar obligations as regards the service of notice, entry into a Deed of Covenant and transfer of membership of the Management Company as if there was a Lease.

fee of £135 held to be reasonable. *Freehold Managers (Nominees) Ltd v Piatti* [2012] UKUT 241 (LC)—fee of £165 inclusive of VAT for grant of permission to sublet allowed. Dicta that on a renewal, £35 inclusive of VAT might be more appropriate. See also *Proxima GR Properties Ltd v McGhee* [2014] UKUT 59 (LC)—£95 (inc VAT) reasonable for consent to sublet on the facts.

³ RICS Rules of Conduct for Members: Part II Para 5. Members shall carry out their professional work in a timely manner and with proper regard for standards of service and customer care expected of them.

⁴ ARMA Q Para 2.2 (g) "Must ensure that a charge made for any other service not covered by the Management Fee is a Proportionate Charge" Proportionate Charge being "A reasonable charge, fee or commission which may include a profit"



The Proposal

A Fast Track Redress Scheme enabling the Ombudsmen, through statements of fact, to deliver decisions on the timeliness of provision and proportionality of fees, within 2 weeks of receipt of the complaint.

This should be added into existing schemes to ensure that Administrators do not have to be part of multiple schemes, and are covered for this element where they are members for other purposes.

Requirements:-

- the Administrator must be registered with the redress scheme
- the complainant must have contacted the Administrator to highlight to them the issue and either have received no response within 14 days or an unsatisfactory response
- the complainant must complete a complaints form stating:-
 - their name and contact details,
 - whether they act on behalf of a third party with their authority,
 - whether they or the third party is the current Leaseholder or an incoming Leaseholder
 - the address of the property,
 - the Administrators name and contact details
 - whether the complaint is in respect of cost of delay
 - 1 if cost, the nature of the service requested eg LPE1 completion, Notice of Assignment, Notice of Charge, Deed of Covenant, Transfer of Share etc
 - the cost being levied
 - the cause for complaint
 - unreasonableness
 - duplication (eg it is unreasonable to charge for a notice that is required to be served on the Landlord for a charge also, containing the same information)
 - 2 if delay, whether payment has been made for the service
 - if so the date of payment for the service

The Redress

For those Administrators found to be at fault, redress should take the form of apologies, specific performance or fines. If they fail to adhere to the decision of the Ombudsman then they can be required to pay higher membership fees, increasing per case of failed adherence, this will ensure that members of the public have a redress process open to them but will incentivise the members to adhere to decisions. Contractual provisions within the membership terms of business will enable court action by the Ombudsmen for failure to pay and provide a further incentive to abide by the decision.