

The Rt Hon James Brokenshire MP
Secretary of State
Ministry of Housing, Communities and Local
Government
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From: Mr Andrea Coscelli
Chief Executive

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26 November 2018

Dear Secretary of State

Leasehold Reform

I am writing in response to your letter of 2 November regarding issues relating to the long leasehold sector in England. This follows my response of 6 November in which I confirmed the CMA's attendance at the industry roundtable held on 8 November.

We have given very careful consideration to these issues again, in particular the problem of escalating ground rents, and reviewed our discussions with your officials on various occasions over the last year. It was also helpful to hear the response from industry at the roundtable last week which was attended by George Lusty, our Senior Director for Consumer Protection.

Having taken everything into account our decision remains that this is not a matter which the CMA should prioritise with regard to the use of any of its tools. I fully appreciate this is not the decision which you and your officials were hoping for. I will explain some of the key factors which informed our decision.

Firstly, I want to make clear that we agree with you that consumers who are caught in leasehold contracts with onerous ground rent clauses are suffering significant detriment. We recognise the very difficult position those consumers are in and the serious implications for those who want to sell their properties. While we have asked your officials at times for further evidence I would like to re-assure you that there was

no perception on our part of there being a lack of significant detriment. Our decision not to prioritise work in this area was based on other factors.

In deciding which issues the CMA should focus its resources on we apply our published prioritisation principles and consider carefully the likely effect on consumer welfare from the use of our tools. We aim to achieve a significant impact from any intervention we make to address a problem.

We primarily use a market study to diagnose a particular problem (or set of problems) and work through the possible solutions. In that context the report we received from your officials in the summer set out the ground rent issue very clearly and we do not believe a market study could achieve much more. Also, as the possible solutions are already broadly known, we do not consider a market study would add any significant value in understanding what is needed to address the problem.

We also considered the possibility of the CMA enforcing consumer protection legislation and wanted to determine whether it could assist with the historical cases where consumers are unable to exit contracts and are therefore likely to have difficulties in selling their properties. We took account of several factors including the legal complexities involved in taking a case in this area which mean there would be no clear guarantee of success.

We considered the application of the Consumer Rights Act 2015 which explicitly widened the actions that an enforcer can seek via commitments and in the civil courts, including seeking redress for consumers who have suffered loss as a result of breaches of consumer law. However, this only applies to breaches of law which occurred after 1 October 2015. The measures cannot be applied retrospectively. In addition, there are no civil fining powers available for breaches of consumer law which restricts the ability of the CMA and other enforcers to incentivise business to comply or address a specific issue. In April 2018 the government published “Modernising Consumer Markets: Consumer Green Paper” in which it said it intends to introduce legislation which will enable financial penalties to be imposed on companies for breaches of consumer law. We very much welcome this initiative which, once implemented, will both discourage infringements and help us to ensure swift compliance once breaches have been identified.

Even with a positive outcome to a case, a result which is specific to a limited set of terms or practices and only tackles one provider may not set enough of a precedent to address all issues across the wider market. There are also potential evidential issues in terms of establishing what representations were made to individual leaseholders at the time of sale, often many years ago, as well as the fact that all leaseholders are likely to have received legal advice as part of the purchasing process.

I would like to reassure you that the CMA is fully aware of the importance of the housing market to the economy and has regular engagement with your officials on a range of issues. For example, we are currently preparing a response to their request for our views on minimum qualification standards for property agents under the proposed new regulatory framework. In terms of our own new work, we are in the early stages of looking at a number of issues in the private rented sector, in particular the possible use of unfair terms in the tenancy agreements being used by letting agents. This is an area where the CMA has previously published business guidance for the sector. In the area of lettings we would very much welcome an appropriate contact at official level with whom we could begin discussions.

It is also important that I clarify the wider context which is currently informing our prioritisation decisions with regard to work in the housing sector more generally. Our ability to launch new discretionary work such as this is significantly affected by the near-term preparations that we must make for EU Exit. In the coming months, we must prioritise setting up our new State Aid function, as well as preparing for a significant increase in the number of large merger and anti-trust cases as those previously dealt with in Brussels transfer to us. This constraint will obviously be significantly more acute in the absence of an EU Exit deal with a transition period, in which case we would likely have to undertake this extra work immediately. While we are recruiting a considerable number of new colleagues, we will not have everyone in place by 29 March 2019, which will therefore place significant constraints on the other work which we can take on if there is a “No Deal” Brexit.

I know it will be disappointing that we have not reversed our original decision on the specific issue of ground rent in leasehold contracts. However, I hope this has clarified our thinking and confirmed that we remain committed to helping address important issues in the housing sector when we believe our intervention can achieve a significant impact. We look forward to continuing to work closely with your officials on these matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Coscelli', with a small flourish at the end.

Andrea Coscelli

Chief Executive

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