



**Law
Commission**
Reforming the law

Residential Leases: Fees on Transfer of Title, Change of Occupancy and Other Events

Summary of responses to Consultation Paper

This document summarises the responses to the Law Commission's Consultation Paper no 226 on event fees

May 2016

THE LAW COMMISSION

EVENT FEES

SUMMARY OF RESPONSES TO CONSULTATION PAPER NO 226

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Approach taken in this paper

Describing responses

This paper describes the responses we have received to the questions and proposals set out in the Consultation Paper on fees on transfer of title, change of occupancy and other events in residential leases published in October 2015. This paper aims to report the arguments raised by consultees. It does not give the views of the Law Commission.

Comments and freedom of information

We are not inviting comments. However, if having read this paper you do wish to put additional points to the Law Commission, we would be pleased to receive them.

Please contact us:

- by email at: event_fees@lawcommission.gsi.gov.uk; or
- by post at: Veena Srirangam Nadhamuni, Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG.

We will treat all responses as public documents. We may attribute comments and publish a list of respondents' names.

Information provided, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998). If you wish your information to be confidential please explain to us why and whilst we will take a full account of your explanation, we cannot give assurance that your confidentiality will be maintained in all circumstances.

1. INTRODUCTION

- 1.1 Residential leases, particularly in specialist housing for older people, may require the payment of a substantial fee when a certain event occurs, for example, on sale or sub-let of the property. They are called by a variety of names, including “transfer fees”, “exit fees”, or “deferred management fees”. We use the generic term, “event fees”, to refer to these kinds of fees.
- 1.2 Event fees in specialist housing can be a way to allow leaseholders to enjoy communal facilities, such as the use of a communal lounge, restaurant or swimming pool, while deferring the costs until the property is sold. On sale, the leaseholder is bound to pay a percentage of the proceeds of the sale to the landlord (the landlord here being the company that owns the freehold of the lease). The fees can range from 1% to 30% of the re-sale value.
- 1.3 Such deferred payment may in theory be beneficial for capital-rich, income-poor pensioners, but these fees have caused much dissatisfaction among residents. There have been many instances where purchasers were not informed of the existence of these fees until after they had already agreed to buy the property.
- 1.4 The Office of Fair Trading (OFT) conducted an investigation into transfer fees (one type of event fee) and published its report in 2013. It concluded that their complexity, coupled with the deferred nature of such fees in the lease, could lead to a significant imbalance between landlords and consumers, to the detriment of the consumer. It therefore concluded that they were potentially unfair contract terms.
- 1.5 The Office of Fair Trading never took the landlords to court, but instead secured undertakings from certain landlords as to how they would apply the transfer fees in their leases. Event fees continue to be widely used in the specialist retirement housing market.
- 1.6 The OFT commented on the lack of clarity in the existing legal framework and recommended that consideration be given to legislative reform.
- 1.7 In September 2014, the Department for Communities and Local Government, asked the Law Commission:
 - (1) to consider the problems caused by terms in residential leases generally, and in the retirement sector in particular, which require the lessee to pay a fee on a transfer of title or change of occupancy; and
 - (2) to consider how the current law addresses the problems that are identified.
- 1.8 We published the Consultation Paper on 29 October 2015 describing the problem, setting out how the current law applies in this area and proposing solutions. We invited comments from all interested parties. The consultation period closed on 29 January 2016.

Responses

1.9 We received 168 responses to our consultation in the form of detailed response forms, letters, reports and leaflet questionnaires.

1.10 48 respondents, from the following categories, used our detailed response form:

Estate agents and chartered surveyors	1
Housing with care operators	9
Funders and investors	1
Managing agents	3
Other professionals	10
Regulators	1
Residents and consumer groups	17
Retirement Housing developers	6

1.11 We designed and distributed leaflets with questionnaire, intended to provide an alternative to the longer response form for residents, to residents living in retirement properties. We received 109 questionnaire responses.

1.12 We summarise the detailed responses first and then turn to the questionnaire responses.

1.13 We also received 11 responses in the form of reports and letters and the views and comments expressed therein are included in this report, although they may not be included in the numerical analysis provided in the following chapters.

Thanks

1.14 We would like to thank all the consultees who responded to the consultation, or met with us, or otherwise contracted us to express their views. Whilst we are unable to directly quote all consultees' responses in this paper, they have been very valuable to us as we put together our recommendations for the report.

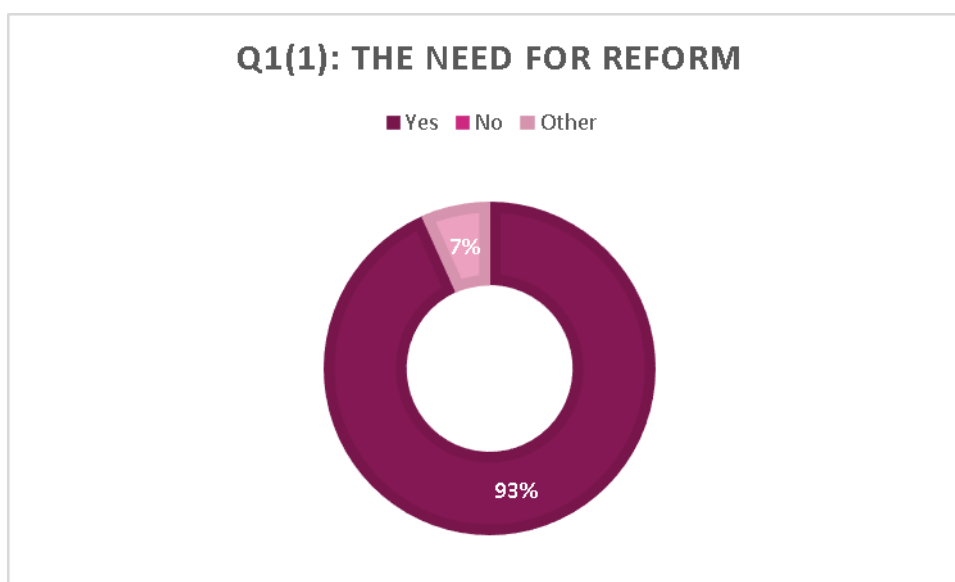
2. THE CASE FOR REFORM

- 2.1 We explained that there is a gap in the law in respect of event fees as they are not covered by statutory protections for residential leases in landlord and tenant law. Further, the application of unfair terms legislation to them is unduly complicated. We argued that there was a need for greater transparency about event fees from the businesses that benefit from the fees.

QUESTION 1: THE NEED FOR REFORM

Question 1(1)

- 2.2 We asked consultees whether developers, operators, and managing agents should do more to bring event fees to the attention of prospective purchasers at an early stage.
- 2.3 We received 45 responses to this question. There was very strong agreement that more needed to be done; 42 (93%) agreed and three (7%) answered “other”.



Arguments in favour

- 2.4 The anger of residents who responded calling for greater transparency was clear. Alan Eadie, for example, said:
- It is unfair to deceive people in the way event fees are hidden... In my own case neither the solicitor nor the estate agent drew my attention to the event fees hidden away in the, belatedly received, very long lease document.
- 2.5 The National Association of Estate Agents (NAEA) supported our view that in order to comply with the Consumer Protection Regulations 2008, disclosure of event fees ought to be made in advertisements, viewings and meetings at the estate agent's office.
- 2.6 There was general recognition that developers and operators could do more to improve transparency. Associated Retirement Community Operators (ARCO), who represent over 50 per cent of the housing with care providers, emphasised:

Our Consumer Code already requires our members to be transparent when dealing with prospective customers... However, we are aware of other parts of the sector where transparency has been lacking (usually where third party estate agents and property managers are involved in resales), and we agree that more could and should be done to bring event fees to the attention of purchasers, especially when external estate agents are handling the resale.

- 2.7 LifeCare Residences, an operator in the retirement community sector, said that they explain any event fees to family members, and to professional advisers at times, as well as to the prospective buyers themselves.

Other

- 2.8 There were calls for additional information about the nature of the event fee term to be made available at an early stage. Mrs Patricia Adams, a leaseholder, said:

Potential purchasers should be made aware of the apparent ability of the landlord... to retrospectively increase the size of the event fee charged on death or termination of the lease... We have now been told that a significantly increased event fee is required, which will be applied retrospectively back to the original date of purchase.

- 2.9 While supporting the Law Commission's proposed approach, the Competition and Markets Authority (CMA) said that consumers' behavioural biases could make it difficult to understand the effects of event fees even where they are reasonably transparent.

- 2.10 Others responded that transparency was not enough and that some event fees should be banned altogether. Leasehold Knowledge Partnership (LKP), the leaseholder rights charity run by Sebastian O'Kelly and Martin Boyd, who, with Melissa Briggs, first brought the issue of event fees to the attention of government and the wider public, stressed:

Any [event] fee that does not go towards the contingency fund, or provide a direct benefit to the site in proportion to the fee charged, should be banned.

- 2.11 Legal and General, a major investor in the retirement housing sector, expressed a concern over the range of options available to the consumer in the sector:

If there is a limited choice for the purchaser in retirement property then just improving transparency in itself does not achieve fairness.

Question 1(2)

- 2.12 We asked consultees whether there was a need for law reform to achieve greater transparency at an early stage.
- 2.13 We received 45 responses. Many were in support of the proposal. 34 respondents (76%) agreed, eight (18%) disagreed, and three (7%) answered "other".

Arguments in favour

- 2.14 Many housing with care operators highlighted the benefits of legal reform. ARCO highlighted three such benefits:

1. Ensure that clear disclosure occurs throughout the wider retirement housing sector,
2. Create a robust framework for enforcement of non-disclosed fees, providing confidence to consumers,
3. Lead to more legal certainty for operators using event fees as part of their business model.

Arguments against

- 2.15 Trowers and Hamlins, an international law firm which acts for landlords, developers and operators of specialist housing, considered that the existing law provides sufficient incentive for early and full disclosure of event fees.

Other

- 2.16 The Bar Council took the view that it was the event fees business model, rather than the law, that needed to change:

A partial solution to the difficulties identified by the Law Commission and others may be to encourage a change of business model rather than depend on trying to mould the law - or, perhaps, bend it out of all recognisable shape - to try to improve the workability of a partially flawed business model.

3. PROPOSALS FOR STATUTORY REFORM

- 3.1 We argued that reform was necessary to ensure that event fees are disclosed to tenants at an early stage. We provisionally proposed three statutory reforms.
- 3.2 Firstly, we proposed reform to clarify that an event fee term should be treated as a contract term for the purposes of unfair terms legislation. Secondly, we considered that event fees that do not comply with a designated code of practice should be listed on the “grey list” in Schedule 2 of the Consumer Rights Act 2015. Thirdly, we argued that fees which are collected to be used exclusively for the maintenance, repair or improvement of the development should be subject to a statutory trust for the benefit of the tenants.

QUESTION 2: BRINGING EVENT FEES WITHIN UNFAIR TERMS LEGISLATION

- 3.3 We expressed the view that unfair terms legislation applied to event fee terms both between the initial landlord and tenant, and between subsequent landlords and tenants on assignment of the lease. We proposed statutory reform to clarify this application of unfair terms legislation to event fee terms.

Question 2(1)

- 3.4 We asked consultees whether they agreed that statutory reform should ensure that event fees are fully assessable for fairness under unfair terms legislation, as set out in the Consumer Rights Act 2015.
- 3.5 44 consultees responded to this question. There was strong support for the proposal among respondents; 37 (84%) agreed, three disagreed (7%), and four (9%) answered “other”.

Arguments in favour

- 3.6 The Law Society argued that there was a need for more structured protection as:

The unbridled nature of event fees and the lack of uniform practice in respect of them has led to references to the Office of Fair Trading and fear that the legal structures of consumer protection now in place do not adequately cover them and their diverse nature.

- 3.7 Age UK argued that fees which were not paid for a service or benefit ought to be banned outright and that there was a need for wider review of the avenues of legal redress available to residents. It supported the proposal, and stressed that for many existing leaseholders, fees were not properly disclosed when they bought the property.

Arguments against

- 3.8 Consultees who disagreed considered that unfair terms law was not appropriate to address the issue of event fees.
- 3.9 The Leaseholder Association, who provide support and advice for leaseholders, said:

Even if positive changes are made leaseholders are unlikely to avail themselves of this legislation due to its complexity and costs of representation. It is potentially a lawyers' gravy train.

- 3.10 The Bar Council expressed concern that landlords may not have much involvement or control over how a lease was presented to a purchaser on assignment. It concluded that one way to address this problem might be to adopt specialist legislation dedicated to retirement property and event fees rather than apply unfair terms legislation to event fees.
- 3.11 It also cautioned against placing reliance on the Draft Common Frame of Reference, which is yet to be agreed or adopted and does not address the effect of unfair terms provisions on assignable contracts.

Question 2(2)(a)

- 3.12 We proposed that an event fee term in a lease should be treated as a contract term for the purposes of unfair terms law. We consider that the Court of Justice of the European Union (CJEU) would take this view.
- 3.13 42 consultees responded, and there was strong support for the proposal with 35 (83%) in agreement. Four (10%) disagreed, and three (7%) answered "other".

Arguments in favour

- 3.14 Many housing with care operators agreed with this proposal, subject to the proviso that, where the event fee had been disclosed transparently, prominently and early in the purchase process, it should still be treated as a 'price term'. The result of this would be that the appropriateness of the amount of the fee would not be assessable for fairness.
- 3.15 The Law Society made a principled case for this view:

Technical distinctions of privity of contract and privity of estate and of "old leases" and new leases that do, or may, arise in this regard under the law of landlord and tenant should not impede protection being afforded to this particular facet of letting of specialist retirement housing.

Arguments against

- 3.16 The CMA considered that many event fees were outside the "price term" exemption even under the existing law.
- 3.17 The Bar Council noted that treating an event fee which complied with the code of practice as a "price term" would not assist a landlord who had failed to ensure that the term was transparent and prominent.

Other

- 3.18 Age UK voiced concern over requiring the leaseholder to take action, by way of litigation, and questioned the suitability of unfair terms legislation.

Question 2(2)(b)

- 3.19 We considered that the focus, for the purposes of unfair terms law, should be on what the current tenant was told. We proposed that an event fee term should be treated as if it were a term of the contract made between the landlord and tenant when the current tenant first became bound by the term.
- 3.20 We asked consultees whether they agreed with this approach. We received 42 responses. 29 respondents (69%) agreed, seven (17%) disagreed and six (14%) answered “other”.

Arguments in favour

- 3.21 LEASE, an organisation that provides advice on residential leasehold property, highlighted the need to protect consumers throughout the term of the lease:

Event fee provisions can over time have greater implications (cost) when the clauses crystallise. Hence, consumers need to be protected throughout the term of the lease.

Arguments against

- 3.22 The Bar Council thought that this proposal could have unintended consequences and stressed the need to ensure that the landlord would only be responsible for what they had said or done with respect to the first leaseholder, and not any subsequent ones with which they may have had little or no contact.
- 3.23 Estates & Management, who act as managing agents, noted in their response that:

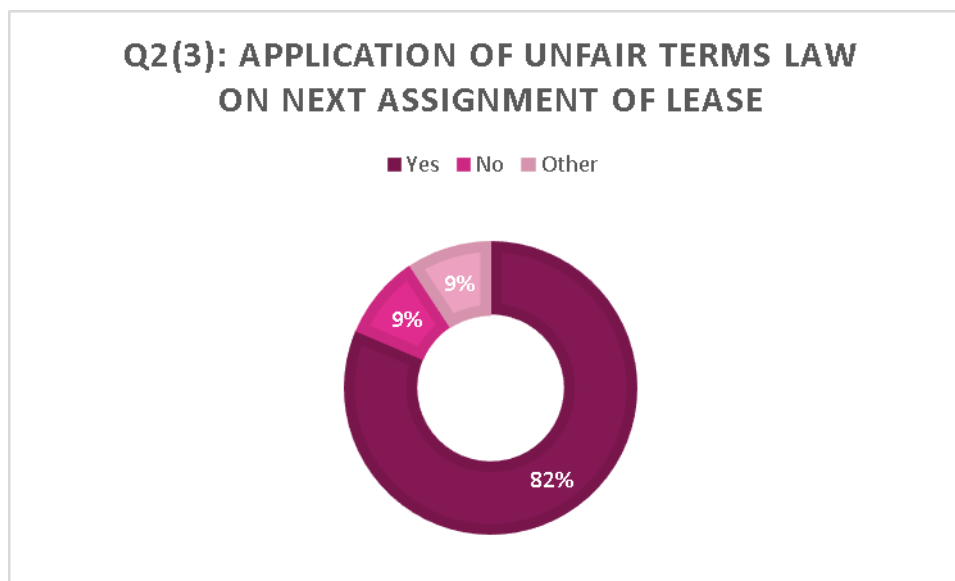
If unfair terms legislation were altered to apply to event fee terms, the effect could be to render terms unenforceable by the Landlord despite the Landlord not being involved in the marketing, sale or conveyancing behind the assignment of the lease, or aware of such a sale.... Legal obligations and related consequences should lie with those entities that are capable of fulfilling the obligations.

Other

- 3.24 Christopher Jessel, a former partner at Farrer & Co, considered that the rights should apply more widely than to consumers, to include personal representatives, who might be professionals.
- 3.25 The Bar Council, on the contrary, argued that it would not be desirable to deem a new contract to be created where the lease vested in personal representatives, on death or on assignment.

Question 2(3)

- 3.26 We expressed the view that unfair terms legislation should apply to event fee terms on the next sale of the lease after the reform comes into effect, irrespective of when the lease was first granted. We considered that this struck the appropriate balance between requiring landlords who benefit from event fees to act in good faith in the future while not penalising them for failure for carrying out these measures in the past.
- 3.27 There was strong support for this proposal in the responses. Of the 43 responses we received to this question, 35 (81%) agreed, four (9%) disagreed, and four (9%) answered “other”.



Arguments in favour

- 3.28 The National House Building Council (NHBC) responded:

Once event fees have to be disclosed on new home sales it would be appropriate for them to be disclosed on the sale or transfer of existing homes and leases to ensure there is fairness and transparency across the specialist homes sector.

- 3.29 Similarly, the CMA observed that the date of the original lease agreement, even where drafted before 1995, cannot make the event fee term immune from challenge for the entirety of the lease.

Arguments against

- 3.30 Some respondents expressed concern over the application of unfair terms legislation to existing leases. Hanover Housing Association responded:

For existing leases, where contracts... have been entered into on the basis of the income stream and liability, this could have the effect of a retrospective change to the contract terms undermining past development or investment decisions.

Other

- 3.31 Some residents called for the reforms to go further, and apply retroactively to current assignees. Robert Holland, for example, said:

Some back-dating to protect those already suffering under unfair terms should be provided in an appropriate form.

Question 2(4)

- 3.32 We asked consultees whether similar principles ought to apply more generally to all covenants in residential leases.
- 3.33 Only a minority of consultees agreed with this proposal. 37 consultees responded, of whom 14 (38%) agreed, 13 (35%) disagreed, and 10 (27%) answered "other".

Arguments in favour

- 3.34 The Property Ombudsman (TPO) emphasised that this was especially important where the lease contained unusual terms in it such that the average consumer would not be expecting such terms in the lease.

Arguments against

- 3.35 LifeCare Residences considered that there was no need for principles pertaining to event fees to apply more widely to all covenants in residential leases. It stressed:

Many of the covenants in residential leases are bespoke and determined by the nature of the property. There is already legislation in place (e.g. landlord and tenant law, competition law etc) and common law provisions and statutory codes (like the Lease Code 2007) which apply and must be considered when drafting residential leases.

- 3.36 Dr Roberts, an Associate Professor at the University of Reading, expressed some reservations over applying these principles more generally as it could have far-reaching implications and a separate consultation would be necessary to address them. McCarthy & Stone, a retirement housing developer, similarly considered that this would go beyond the ambit of this consultation and may cause greater uncertainty in the sector.

Other

- 3.37 Age UK commented:

there should be equality of approach on charging, applied to the leasehold sector, for both retirement and general... leasehold. Exit fees, as a bonus to the provider, are not a common feature in the mainstream leasehold market and cannot be justified for the majority of retirement leasehold property.

QUESTION 3: THE GREY LIST

- 3.38 We proposed that an event fee term which did not comply with the relevant provisions in the code of practice should be added to the grey list in Schedule 2 of the Consumer Rights Act 2015. We believe that this is a necessary step to protect consumers where event fees have not been disclosed in a transparent and prominent manner, and provide certainty to landlords over the fairness of the term if they comply with the code provisions.

Question 3(1)

- 3.39 We asked consultees whether they agreed that the Secretary of State should exercise the power in section 63(3) of the Consumer Rights Act 2015 to add a term covering event fees to the grey list.
- 3.40 We received 41 responses, 32 (78%) of which agreed with the proposal, six (15%) disagreed and three (7%) answered “other”.

Arguments in favour

- 3.41 The CMA agreed with our approach and welcomed the recognition that event fees can exploit behavioural biases such that consumers may be unaware or fail to understand the full implications of the term.
- 3.42 The Law Society supported a “light” regulatory approach to event fees and stated:

The “grey list” treatment is the preferred course to adopt if a disincentive effect of regulation on development and investment in such a limited area of the market is to be avoided.

Arguments against

- 3.43 The Association of Retirement Housing Managers (ARHM) highlighted the need to distinguish between types of event fees to ensure that fair terms are not brought under question by the grey list. They argued that some kinds of event fees (eg, sinking fund contributions) should not be on the grey list.
- 3.44 Estates & Management were concerned that the grey list addition may affect landlords who have been assigned the freehold interest. They emphasised that the addition may suggest an inherent problem with event fees and were not persuaded by the concern over behavioural biases of purchasers.
- 3.45 Age UK considered that adding event fees terms was not a satisfactory solution from the consumer perspective. It argued the government ought to go further than placing event fee terms on the grey list by rendering those fees which do not reflect a real cost as automatically unfair. It said:

The generalised nature of the grey list will mean that a legal challenge would not be straightforward...[M]any older leaseholders will not be prepared to take civil action and may feel bound to pay the fee to avoid a dispute with the provider.

Question 3(2)

- 3.46 We asked consultees whether the addition to the grey list should be confined to event fees where the person claiming the fee has failed to comply with the relevant provisions of an approved code of practice.
- 3.47 We received 39 responses, expressing strong support for the proposal. 30 (77%) agreed with the proposal, five (13%) disagreed and four (10%) answered “other”.

Arguments in favour

- 3.48 LifeCare Residences highlighted that any parameters set out in the code would greatly improve the situation for consumers, developers, and investors by providing greater certainty. It added:

The code would however need to be given sufficient prominence and backing by the industry and government bodies and would need to be appropriate to all of the categories of owner-occupied specialist housing (from sheltered accommodation to specialist retirement villages).

- 3.49 Many residents agreed with proposal and emphasised the need for the codes of practice to be reinforced by legislation to ensure effective enforcement of the standards they prescribe.

Other

- 3.50 The Law Society commented on the proposal more broadly, highlighting the need for the event fee to bear some relation to the service provided, or the reduction in the purchase price.
- 3.51 LEASE considered that the proposal ought to go further and stated:

Event fees that are pure income to the landlord, rather than a cost to meet cyclical major works and/or to even out service charges over time, should automatically appear in the grey list.

QUESTION 4: A STATUTORY TRUST FOR SINKING FUND EVENT FEES

- 3.52 We proposed that where the lease requires event fees to be used exclusively for the maintenance, repair, or improvement of the development, the fees should be subject to a statutory trust equivalent to the trust arrangements set out in section 42 of the Landlord and Tenant Act 1987.
- 3.53 Most consultees were in favour of the proposal. We received 44 responses, of which 29 (66%) agreed, four disagreed (9%), and 11 (25%) answered “other”. Of those who agreed, 13 were residents, and two were housing with care operators.

Arguments in favour

- 3.54 McCarthy & Stone, the Home Builders’ Federation (HBF), and PegasusLife were among retirement housing developers who considered that this was important for the protection of the tenant’s monies.

- 3.55 LEASE argued that legal nomenclature should not affect protection of the tenants' monies, and that a statutory trust will go towards improving the confidence of prospective purchasers in retirement housing.

Arguments against

- 3.56 One housing with care provider argued that event fees served a different purpose, and ought not to be treated as a "sinking fund". They considered that event fees represented a return on the developer's investment in the fixed assets to deliver services, facilities, and amenities.
- 3.57 MHA, a housing with care provider, expressed concern that the requirement of a statutory trust would restrict their ability to borrow as it might increase risk.

Other

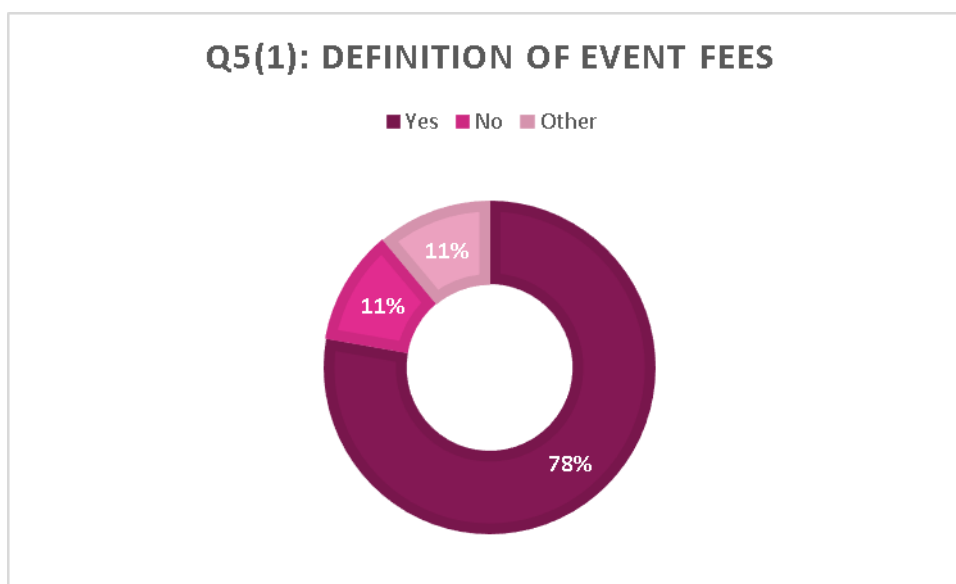
- 3.58 Three other points were raised.
- 3.59 Firstly, Christopher Jessel emphasised that the statutory trust, particularly for event fees, may run into difficulties over enforceability. Where the "contributing tenant" has paid into the fund, and then moved on, a new lessee will not have much information about the payments. He emphasised the need for a mechanism to ensure that the new lessee is given this information requiring the landlord to notify the tenant when the payment had been made into a designated bank account. He also suggested that an event fee clause could be treated as a "prescribed clause" in the lease which will allow the Land Registry to include a statement on the title.
- 3.60 Secondly, Anchor (a housing with care provider) ARHM, and ARCO said that the exemption for Registered Providers contained in section 42 ought to be extended to the new statutory framework. Anchor and ARHM argued that, were the exemption not provided, the cost of maintaining trust accounts for large Registered Providers would be considerable and have a detrimental impact on the leaseholders. ARCO highlighted that these providers are regulated by the Homes and Communities Agency and are, as such, subject to strict liquidity requirements.
- 3.61 Thirdly, Trowers and Hamlins commented that the regime should only operate with respect to future transactions and not to existing structures to avoid unintended consequences.

QUESTION 5: DEFINITION OF EVENT FEES

- 3.62 We defined an event fee as a term which requires the tenant to pay the fee on, or in connection with, the title to the lease changing hands, a change in occupancy or some other event which creates a third party interest in the lease, and the fee is fixed or calculated in accordance with a formula.
- 3.63 We emphasised the need for the definition to be sufficiently broad to prevent circumvention of legislative controls. We considered that existing protections for service charges and administration charges would not apply to event fees.

Question 5(1)

- 3.64 We asked consultees whether they agreed with our proposed definition of an event fee. Of the 45 responses we received to this question, 35 (78%) agreed, five (11%) disagreed, and five (11%) answered “other”.



Arguments in favour

- 3.65 TPO supported this proposal and said:

an event fee should include any fee which becomes payable in connection with a defined event rather than only on the happening of a defined event. This is a fair and reasonable approach, based on the essential principle of transparency at the point an average consumer is required to make a transactional decision.

- 3.66 The Law Society agreed with the proposed definition and argued that defining it otherwise would lead to uncertainties as to the applicable regime and consequent litigation.

Arguments against

- 3.67 Age UK considered that proposed definition did not distinguish between different kinds of fees. It said:

the definition...conflates fees for specific services (e.g. a contribution to the contingency fund payable when a resident sells a property) with an exit fee which is effectively a bonus to the provider. Using the term “event fee” for a range of charges gives some legitimacy to charges which are unfair, excessive and based on arbitrary factors... We believe that any “event” charge needs to be based on the cost of a service and open to challenge by the leaseholder.

- 3.68 Christopher Jessel highlighted the need for tighter drafting of the definition to cover situations where the fee is payable by the assignee of the lease, rather than the tenant, as in *Burrell v Helical (Bramshott Place) Ltd* [2015] EWHC 3727 (Ch).

Other

- 3.69 NHBC commented that freehold residences may need to be included in the definition. Christopher Jessel, similarly, cautioned that excluding freeholds leaves the possibility for developers to avoid our proposed legislation by accommodating event-fee type financial structures within freehold tenure.
- 3.70 He suggested a different approach to analysis of the event fee. Where the event fee is quite high, he argued that a court might regard the occupier and developer as tenants in common in equity which would vest a proprietary right in the developer rather than a right to the event fee under the covenant.

Question 5(2)

- 3.71 We proposed two exceptions to the definition of event fees. We set out the law applicable to administration charges and our view that the definition of event fees should not include such charges. Further, we considered that fees charged for the maintenance, repair or improvement of the development, subject to a statutory trust under our proposals, should lie outside the definition of event fees.
- 3.72 Most consultees agreed with this approach. 43 respondents answered this question and 28 (65%) agreed, five (12%) disagreed, and 10 (23%) answered “other”.

Arguments in favour

- 3.73 The Chartered Institute of Legal Executives (CILEx) agreed that event fees needed to be treated differently to administration fees and sinking fund fees, and added:

They are a different fee and normally not event fees although they arise due to the event. The question of reasonableness should still apply in particular if it cannot be demonstrated that maintenance is reduced due to the expectation or payment of event fees.

- 3.74 ARHM supported this proposal, particularly with regard to fees collected for the sinking fund, as it would ensure that the maintenance fund did not lose out because of an error on the part of the landlord or manager.

Arguments against

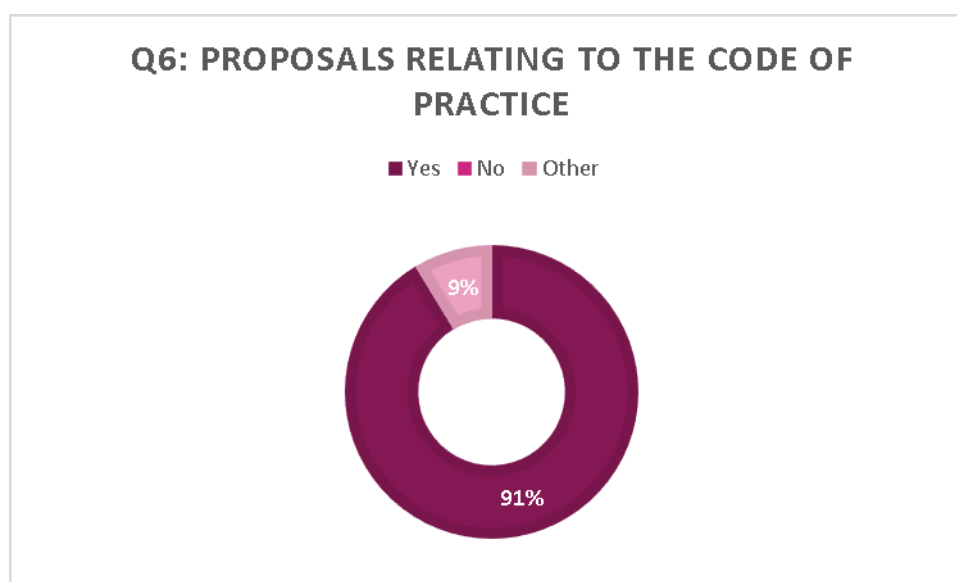
- 3.75 The CMA saw the benefit of contingency funds to all the tenants as long as they reduced the overall service charge, but considered that such fees should be reviewable for reasonableness as they had potential for significant unfairness towards individual tenants.

4.CODES OF PRACTICE

- 4.1 We emphasised the importance of codes of practice in ensuring the transparency of event fees in the Consultation Paper, and put forward a set of provisions about event fees (the “event fees provisions”) that can be incorporated into the relevant codes of practice for developers, operators and managing agents.

QUESTION 6: PROPOSALS RELATING TO CODES OF PRACTICE

- 4.2 We asked consultees whether they agreed with our proposal that the codes of practice applying to developers, managing agents and estate agents should be strengthened to ensure that event fees are brought to the attention of prospective purchasers at an early stage.
- 4.3 There were very high levels of support for this proposal, and of the 46 responses received, 42 (91%) agreed, and four (9%) answered “other”.



Arguments in favour

- 4.4 The CMA highlighted the benefits of using the codes of practice, in setting out best practice and providing for redress schemes, and thought that the provisions needed to be strengthened to ensure robust self-regulation.
- 4.5 Many housing with care operators pointed out that the ARCO code already sets high standards for transparency amongst its membership but that more could be done elsewhere in the sector to ensure compliance.
- 4.6 TPO emphasised the need for the codes relating to the different stages in the lifetime of the lease (development, purchase, assignment) to be updated and strengthened in a consistent manner.

Arguments against

- 4.7 The Bar Council expressed concern that the Law Commission's approach would use the codes of practice for a purpose for which they were not designed. It considered that the codes were focused on giving a proper opportunity to those buying retirement leases to have accurate information given to them, rather than ensuring that the landlord meets the requirements of consumer law.
- 4.8 Similarly, LKP queried whether the codes of practice were the right tool to ensure that information about event fees is provided. They thought that an obligation for statutory disclosure would be more appropriate.

Other

- 4.9 The CMA stressed that in order to be effective, the relevant codes of practice need to be rigorously monitored, with robust disciplinary sanctions for breaches. It added that the code provisions should also set out alternative dispute resolution mechanisms which consumers can use to challenge non-compliance with the code provisions.
- 4.10 Age UK highlighted that for older consumers:

The usefulness of codes depends on how they are implemented and the capacity of residents to take up a complaint when the rules are breached. We believe that the code of practice needs to be backed up by a proper regulatory framework and independent regulator.

QUESTION 7: SPONSORSHIP OF EVENT FEE PROVISIONS

- 4.11 We asked for views on which organisations should take responsibility for implementing new code provisions dealing with event fees.
- 4.12 We received 33 responses expressing a range of views.

Organisations with current regulatory responsibility

- 4.13 Some respondents were happy for organisations that currently regulate the sector to continue to do so. NAEA suggested that the National Federation of Property Professionals (NFoPP), which regulates individuals and companies falling within the jurisdiction of NAEA, should continue to set standards and provide guidance to estate agents.
- 4.14 Hanover Housing Association and HBF considered that the Royal Institute of Chartered Surveyors (RICS), ARHM and Association of Residential Managing Agents (ARMA) were suitable organisations that may be able to implement provisions on event fees.
- 4.15 Anchor favoured the ARHM code of practice to other alternatives because it already has governmental approval.

A new and independent body

4.16 In considering which organisations might take responsibility for new code provisions, residents and consumers tended to prefer an independent body rather than oversight by industry organisations. For example, Alan Eadie stressed that the codes cannot be left to landlords to implement. Michael Garrick insisted that a new regulator must ensure that the interests of residents are a priority.

4.17 Elderly Accommodation Counsel (EAC) similarly recommended:

In the interests of consumer confidence and reputation of the sector [that] consideration is given to establishing a fully independent ombudsman /organisation for the leasehold retirement sector which is neither reliant on, nor run by, the sector itself.

4.18 Professor James Driscoll, Professor of Property Law at London South Bank University, suggested that local housing authorities might be the appropriate bodies to take responsibility for implementing new code provisions.

QUESTION 8: USE OF EVENT FEES OUTSIDE SPECIALIST HOUSING

4.19 We asked for evidence, with specific examples where possible, on the use of event fees in residential leases outside specialist housing for older people.

4.20 We received 22 responses to this question.

Holiday homes

4.21 Retirement Villages Group mentioned legislation in respect of mobile homes and caravan parks as including provision for payments on assignment.

4.22 Dr Roberts gave examples of holiday home developments, where upkeep of the common parts was funded by fixed charges, escalator clauses, and in some cases event fees on re-sale. He considered that greater use ought to be made of rentcharges.

Right to buy

4.23 Surrey Law Society and Christopher Jessel identified “Right to Buy” schemes as using a type of event fee. Where a former tenant has become a freeholder or long leaseholder the provision for repayment of discount on early disposal in the Housing Act 1985, section 155, is comparable to an event fee. It involves a covenant under section 156 and is secured by way of legal mortgage.

Historic examples

4.24 Christopher Jessel also described two historic examples of fines which became payable in circumstances similar to event fees. Firstly, under copyhold tenure (abolished by the Law of Property Act 1922), fines were payable both on the death of a tenant and replacement by a new tenant. The common law required copyhold fines to be reasonable and this came to be interpreted as a maximum of two years’ improved value of the land.

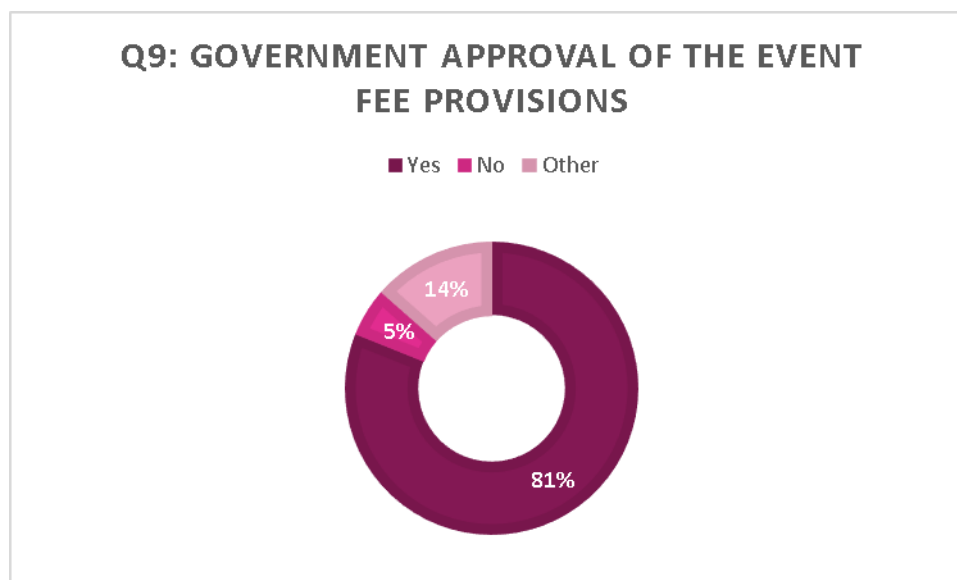
4.25 Secondly, recurring payments were also due under many perpetually renewable leases. A lease for say 7 or 21 years might be renewed on payment of a fine. Such a payment might be triggered by the death of the tenant. These leases were converted into terms of 2000 years under the Law of Property Act 1922 and the obligation to pay a capital sum on renewal was decapitalised into an increase in the rent.

4.26 On the basis of these examples, Christopher Jessel pointed out that the law has found it necessary in the past to control such payments. He suggested that if controls are going to be imposed on event fees payable on sale by outgoing tenants, it may be advisable to extend the controls to entry fines so that landlords cannot avoid the reforms by providing for payment by the incoming lessee rather than the outgoing one. He noted that some landlords are already doing so, as appears from the lease at issue in *Burrell v Helical (Bramshott Place)*.

QUESTION 9: GOVERNMENT APPROVAL OF THE EVENT FEE PROVISIONS

4.27 We proposed that event fees should be approved by the Department for Communities and Local Government (DCLG) under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. We considered that this would ensure a high, consistent status for the codes and require the courts to take any provision which appears relevant to determine a question in proceedings.

4.28 We asked whether consultees agreed with this approach. There was strong support for the proposal, and of the 37 responses received, 30 (81%) agreed that the event fee provisions should be approved, two (5%) disagreed and five (14%) made other comments.



Arguments in favour

4.29 The Law Society noted that codes of practice are useful in applying a “light touch” approach in raising standards of practice against the background of a court or tribunal being able to take account of them as admissible evidence.

- 4.30 EAC supported approval of the codes of practice by DCLG as it would help the reforms to be introduced quickly without requiring primary legislation.

Arguments against

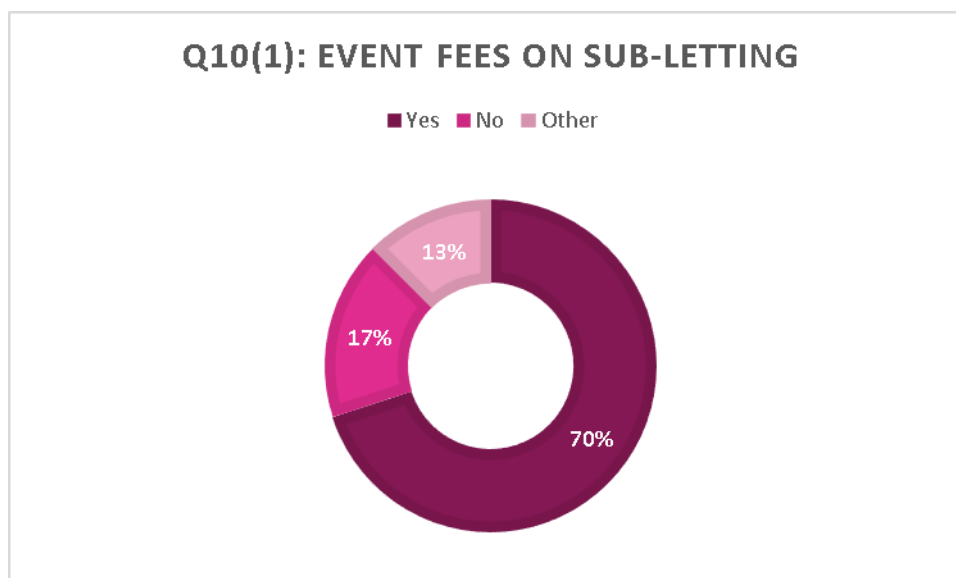
- 4.31 Some of the residents, being opposed to event fees in any form, were also opposed to the proposal for approval.

QUESTION 10: EVENT FEES ON SUB-LETTING

- 4.32 We considered that event fees on sub-letting could operate harshly in circumstances where, for example, the leaseholder is unable to sell the property, and has sub-let it in order to meet obligations such as service charges.

Question 10(1)

- 4.33 We proposed that event fees payable on sub-letting should not be charged as a percentage of the open market value. We asked consultees whether they agreed with this proposal.
- 4.34 Most were in favour of the proposal, with 28 of the 40 responses received (70%) supporting it, seven (18%) disagreeing, and five (13%) raising other comments.



Arguments in favour

- 4.35 LEASE and Age UK highlighted that basing a fee on the market value is an arbitrary measure.
- 4.36 Age UK further emphasised that the fee should be based on the cost of any services provided by the landlord. The Law Society adopted a similar approach and reasoned:

The managing agent is required to carry out the same amount of work per letting no matter the value of the transaction; it is an administrative function only. A fee in this event should, in the absence of special circumstances, be payable on an estimate of the work in processing the matter in advance to provide a fixed fee.

- 4.37 Retirement Villages Group agreed that using open market value is not ideal because it can cause disputes.

Arguments against

- 4.38 Some housing with care operators disagreed with this proposal despite many not permitting sub-letting in their leases. Orders of St John and ARCO both highlighted that those organisations which allow sub-letting needed to be allowed flexibility in structuring their business model. Further, they expressed concern that a continuous sub-let by the leaseholder could avoid the event fee altogether, which may be to the detriment of other leaseholders.

Other

- 4.39 HBF highlighted that event fees on sub-letting could help keep service charges low and argued that contributions to the sinking fund should continue to be collectable on sub-letting.
- 4.40 The CMA emphasised the market benefits of sub-letting retirement properties including making it affordable to rent for those could may not be able to buy a retirement property, and ensuring that such properties were put to use rather than kept vacant.

Question 10(2)

- 4.41 We asked consultees for suggestions on fair and proportionate ways to calculate sub-let fees, such as flat fees or a percentage of the rent, as an alternative to a percentage of the open market value.
- 4.42 We received 29 responses.

Fixed fee

- 4.43 Estates & Management thought that a flat fee, rising annually in line with inflation, would be the most appropriate method of calculating the event fee.
- 4.44 HBF and McCarthy & Stone considered that either flat fees or a percentage of the rent would be reasonable.

4.45 TPO considered that:

Flat or fixed fees would be easier for potential purchasers to budget for, however may not be tempting to landlords especially where a long term tenancy is involved. A flat fee subject to a maximum amount payable at the start of the tenancy and subsequent renewals could prove more acceptable.

- 4.46 ARHM suggested that the landlord could publish details of a fixed event fee that will be charged or alternatively a sub-let fee could be a proportion of monthly rental income.

Annual fee

- 4.47 Operators providing housing with care emphasised the need for careful consideration, as event fees charged on sub-letting can be particularly difficult to calculate for business models where event fees step up quickly and level out after a period of time.

- 4.48 CILEx considered that the First-tier Tribunal should be asked to rule on the amount of the fee, publishing an annual figure after review in line with the Retail Prices Index (RPI) or a larger increase if circumstances warrant it.

Restriction of event fee to administrative cost

- 4.49 Professor James Driscoll suggested that any fee should be treated as an administration charge which should reflect only the cost to the landlord in considering an application for permission to sub-let.
- 4.50 Residents and consumers also tended to agree that a flat rate should be charged equating to the actual administrative costs to the landlord on sub-letting. The Leaseholder Association supported this position, as they consider that event fees should only be payable in return for a service provided by the landlord.
- 4.51 The CMA also advanced that event fees should only be charged on sub-letting as a flat fee representing administrative costs.

Other alternatives

- 4.52 Christopher Jessel suggested the application of calculation rules similar to Stamp Duty Land Tax as an option.
- 4.53 The Law Society considered that a fee representing a percentage of the monthly rent may be a fair alternative.

Question 10(3)

- 4.54 We asked consultees whether the codes of practice should prescribe a maximum amount that may be charged on sub-letting.
- 4.55 Views were split on this proposal. We received 41 responses, of which 22 (54%) agreed, 18 (44%) disagreed and one (2%) answered "other".

Arguments in favour

- 4.56 Individual residents and consumers were strongly in favour of the proposal. Alan Boorman said:

If...sub-letting event fees are to be charged, then there should definitely be a limit to the charges that can be made and to the frequency in which they can be made.

- 4.57 The CMA agreed with the proposal and considered that the maximum should be based on the actual and reasonable costs to the landlord. This may enable the tenant to challenge the reasonableness of the charge in the First-tier Tribunal.

Arguments against

- 4.58 A housing with care provider was concerned about the effect on existing business models:

Should the amounts to be collected on sub-letting prescribed by the Codes be lower than the expected event fee, this would create an incentive for owners of leasehold properties to sub-let indefinitely stifling the continuing supply of properties onto the “for sale” market resulting in less innovation and tenure choice for consumers and operators.

- 4.59 Retirement housing developers such as PegasusLife and McCarthy & Stone considered that the charges should be assessed for fairness on an individual case-by-case basis. Hanover Housing Association anticipated that the maximum amount might become inappropriate as a result of inflation in property prices and rents.

QUESTION 11: EVENT FEES IN UNEXPECTED CIRCUMSTANCES

- 4.60 Event fees may be chargeable in circumstances other than a sale or sub-let, such as where there is a change of occupancy and a relative or carer moves in. We expressed the view that fees charged in such circumstances could be considered unfair. We noted that, following the OFT investigation, many landlords have given undertakings not to charge event fees other than for sale or sub-letting. We argued that this should be part of the code provisions.

- 4.61 We asked consultees whether they agreed that event fees should only be charged on sale or sub-letting. We received 42 responses. 22 respondents (52%) agreed, nine (21%) disagreed and 11 (26%) answered “other”.

Arguments in favour

- 4.62 Many residents and consumer groups were firmly against event fees being charged in any circumstances other than sale and sub-letting. Some went further, including LEASE, Win Cummins (a solicitor) and Surrey Law Society, and argued that such fees should be charged only on sale.

- 4.63 Retirement housing developers were also in favour of the proposal. PegasusLife commented:

It is important that tenants are not faced with unexpected and possibly significant expenditure on event fees which cannot have been contemplated and taken into account at the time of purchase.

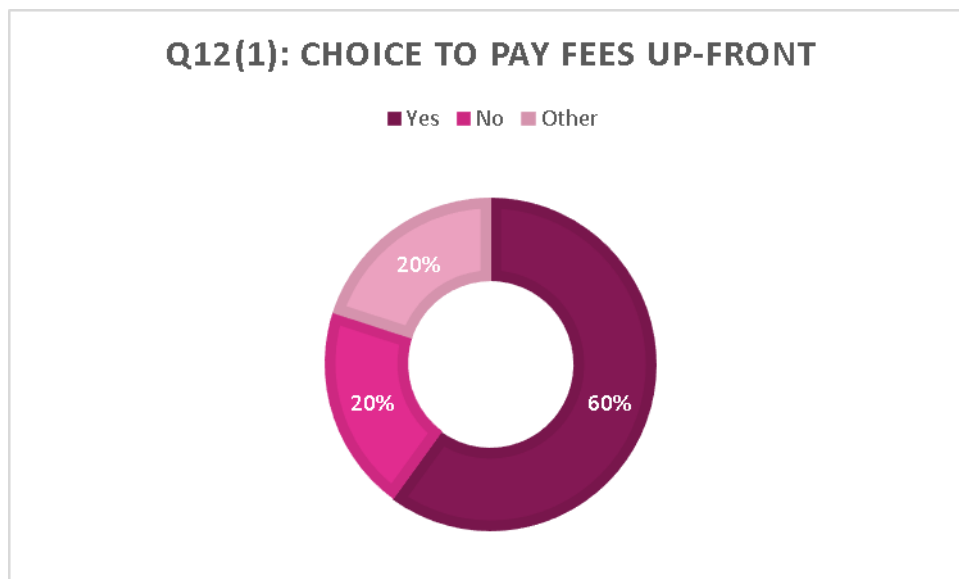
Arguments against

- 4.64 LifeCare Residences considered that the landlord should be allowed to execute a forced sale of the lease, with event fees being payable in circumstances where the tenant becomes physically or mentally unfit to remain in the property or there is persistent anti-social behaviour. It thought that operators and developers should be able to include such terms to ensure the safety of the other residents.
- 4.65 ARCO and Orders of St John acknowledged that event fees should not be collected when a *bona fide* occupant re-mortgages, moves a partner or carer in, or in other circumstances that are not related to changes in the main occupancy of a property. However, they thought that event fees might be charged on change of occupier in circumstances where the arrangement was aimed at avoiding payment.

QUESTION 12: A CHOICE TO PAY FEES UP FRONT

Question 12(1)

- 4.66 We explained that one of the concerns over the ways in which event fees were being charged was the lack of certainty for the consumer, given that the amount of the fee would depend on factors that were not knowable at the time of purchase, such as how long they might live in the property and any change in the value of the property in that period.
- 4.67 We proposed that where the event fee is calculated as a percentage of the sale price, landlords should give prospective purchasers an alternative payment option, such that they can pay off their event fee along with the purchase price.
- 4.68 There were 45 responses to this question. 27 (60%) agreed with the proposal, nine (20%) disagreed, and nine (20%) answered “other”.



Arguments in favour

- 4.69 Retirement Villages Group supported the proposal, noting that they already provide this option. However, they highlighted that there was very little demand for the option from the residents.
- 4.70 EAC argued that having greater choice would lead to increased consumer confidence and greater understanding of event fees. It also highlighted that this may be attractive to developers as it would provide an instant stream of income.

Arguments against

- 4.71 FirstPort, who act as managing agents, highlighted that alternative payment at the time of purchase would not be attractive to residents, who were likely to prefer payment at a later date or by their estate.
- 4.72 Hart explained that the uncertainty over a resident's length of stay and any change in value of the property led to difficulty with structuring an alternative payment option. Hanover Housing Association commented that up-front payment is likely to be lower than event fees paid at the end of the ownership because of price inflation which, in turn, could lead to higher service charges for all residents.
- 4.73 Some residents shared this concern, highlighting that property prices could increase as well as decrease, which may leave them in a worse position if they had opted to pay up-front.
- 4.74 LKP opposed any fee:

based on some form of actuarial gamble related to how long the prospective leaseholder expects to live. An event fee should only be proportionate to the services provided during the length of occupancy.

Other

- 4.75 Anchor generally agreed with the proposal but wanted contributions to the sinking fund to be exempt because an up-front payment may mean that some leaseholders contribute less to the fund than others.
- 4.76 Age UK argued that service charges should be deferred only in exceptional circumstances and only for schemes that offer clearly defined additional care and support services. Where there are fixed service charges, they agreed that alternative payment options could be provided to ensure greater transparency for the purchaser.

Question 12(2)

- 4.77 We invited suggestions from consultees over which alternative payment options might be attractive to prospective purchasers and how they should be presented. We received 29 responses.
- 4.78 Some housing with care operators, such as the Orders of St John Care Trust, ARCO and LifeCare Residences, highlighted the need to refrain from being too prescriptive in the pricing of any alternative payment options.

4.79 FirstPort considered that the clearest and most transparent option for consumers was to link the fee to the purchase price of the property. It suggested that charging a higher percentage of the purchase price for an up-front payment option, as compared to the deferred payment option, may help ensure fairness between those who pay in advance and those who choose to defer.

4.80 EAC suggested that alternative payment options could include a “pay as you go” scheme which would allow for monthly or annual payment of the fee, or an upfront premium payable at the time of purchase. They considered that the latter could be calculated as a percentage of the purchase price, reflect the annual service charges, or be a flat fee on top of the purchase price.

4.81 Hart advanced their “ground rent alternative” as an option:

Hart have been offering this alternative since 2012 and incoming lessees can elect to pay the ground rent rather than an event fee. Following the introduction of the ground rent alternative, the proportion of Hart’s 575 lessees who have elected for ground rent is currently settling at around 8½%.

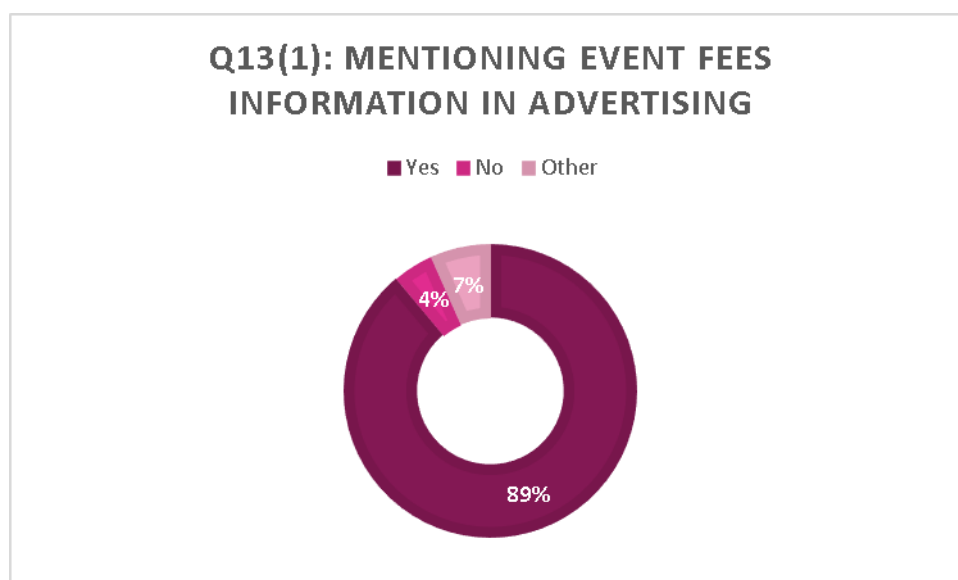
QUESTION 13: DISCLOSURE REQUIREMENTS WHEN THE LANDLORD SELLS THE PROPERTY DIRECTLY

4.82 We proposed a range of disclosure requirements for event fees which would apply where the landlord advertises and sells the property directly to purchasers or is responsible for showing around prospective purchasers.

Question 13(1)

4.83 The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) require advertisements not to omit material information (such as about additional fees payable) in such a way as to mislead consumers. We asked consultees whether they agreed that advertisements which mention the price of the property should also mention the event fee.

4.84 There was strong support for this proposal from consultees. Of the 45 responses received, 40 (89%) agreed with the proposal, two (4%) disagreed and three (7%) answered “other”.



Arguments in favour

- 4.85 The CMA stated that in order to comply with the CPRs, property professionals must ensure that there are no “misleading omissions”, and that failure to disclose an event fee may be such an omission.

Arguments against

- 4.86 LifeCare Residences stressed the need for this requirement to be practicable. They considered that including all the details of the event fees, eg how it is calculated and when it would become payable, would be too complicated to include in an advertisement, particularly where there are a range of payment options.
- 4.87 NHBC were concerned that the effect of these proposals would be to elevate event fees above other kinds of fees, such as management fees, which can be substantial.

Other

- 4.88 ARCO, and many operators in the housing with care sector, commented that the prominence that the event fee should have in the advertisement ought to depend on how the price of the property itself is presented. Where specific prices are displayed, they considered that a statement such as ‘additional fees apply’ ought to satisfy this requirement.

Question 13(2)

- 4.89 We proposed that prospective purchasers should be given a disclosure document, detailing information about event fees, when they first visit the property.
- 4.90 There was strong support for the proposal, with 38 (86%) of the 44 responses we received agreeing, two (5%) disagreeing, and four (9%) making “other” comments.

Arguments in favour

- 4.91 Age UK stressed that this was essential for purchaser to make an informed assessment of the costs involved.
- 4.92 There was much support from housing with care providers too, who suggested that the disclosure could be done in two stages. ARCO suggested that on the first visit, the prospective purchaser could be given an initial disclosure statement which could include generic information on when the event fee will be payable, how it is calculated, and what it is for. Once a specific unit had been chosen, a disclosure statement particular to that unit, showing a number of scenarios and the event fee payable in each of them could be made available. The advantage of this would be to reduce the administrative burden on the operator to produce a specific worked example up front, while ensuring that the prospective purchaser has information about event fees at every stage.

Arguments against

- 4.93 Some consultees advanced that this may be too early in the process to require a disclosure document to be given to the prospective purchaser. The NHBC considered that information about event fees need only be given before any financial decision is made by the purchaser because:

The first visit to a new retirement home development is often quite speculative and we are not sure that there should be a requirement to provide disclosure to every casual visitor.

Question 13(3)

- 4.94 We proposed that where the property is sold off-plan, the disclosure document should be supplied on a visit to the site or sales presentation, or at the first significant interaction with sales staff.
- 4.95 There were very high levels of support for the proposal. 40 (93%) of the 43 responses agreed, one (2%) disagreed, and two (5%) answered “other”.

Arguments in favour

- 4.96 Age UK considered that disclosure should be required at both stages in order to ensure that the prospective purchaser has seen and understood the disclosure document.

Other

- 4.97 LifeCare Residences cautioned against being too prescriptive as to when a disclosure document should be supplied as the appropriate time for disclosure will depend on the circumstances in each case.

Question 13(4)

- 4.98 We proposed that the disclosure document should set out in the same place all the event fees applying to a property, and illustrate their effect, explain alternative options and give contact details for advice organisations.
- 4.99 This proposal was strongly supported by consultees. Of the 43 who responded to this question, 38 agreed (88%) and 5 (12%) answered “other”. Some consultees were split in their responses, favouring the first part of the proposal but disagreeing with the second.

Arguments in favour

- 4.100 EAC strongly supported the proposal that the disclosure document should encourage prospective purchasers to seek impartial advice on their housing options.
- 4.101 NAEA were in favour of including contact details of advice organisations including local authority trading standards services, Money Advice Service and Citizens Advice Bureau.

Arguments against

- 4.102 Several housing with care operators considered that advice organisations might not have the specialist expertise to offer advice on event fees, which may be detrimental to the consumer as well as the operator. Enterprise and Anchor, for example, preferred to point prospective purchasers to their solicitors for advice instead.

Other

- 4.103 An operator in the housing with care sector cautioned that it might only be possible to estimate service charges and sinking fund fees for the purposes of the disclosure document, as these will depend on the costs spent on the development.

Question 13(5)

- 4.104 We observed that many operators used worked examples to explain the operation of event fees, some were not as clear or representative as they could be. We proposed that the codes of practice should set clear parameters about how these examples are calculated.
- 4.105 We asked consultees whether the code should specify how illustrative examples are calculated in this two-part question. In the first part, we asked whether the example should be based on a representative price for that development. In the second, we asked whether the code should standardise the intervals and the range of likely house prices so that they extend to an adequate number of years.
- 4.106 Most supported this proposal. Of the 42 responses we received, 29 (69%) agreed, two (5%) disagreed and 11 (26%) answered “other”. As with the previous question, some consultees were divided in their response, supporting the first part while expressing reservations about the second.

Arguments in favour

- 4.107 Many housing with care operators, such as Enterprise, agreed that worked examples needed to be based on realistic prices. They also accepted the need for standardised intervals, and emphasised that this should be based on the average length of stay.

Arguments against

- 4.108 HBF and PegasusLife expressed concern over making predictions about housing prices which had the potential to either be taken as a warranty by the purchaser, or mislead them as to the extent of the fee.

Other

- 4.109 ARCO highlighted the need for the projection to be based on regional house prices, rather than national averages.
- 4.110 LifeCare Residences considered that the examples should not be at standardised intervals or linked to fixed house price increases. They cautioned against a “one-size-fits-all” approach, which may be arbitrary. They suggested that:

there should be a range of years and different assumed rates of annual property price growth illustrated and examples would be affected by the typical age of the target market for different segments of the retirement market. LifeCare Residences' typical average length of stay is 6-8 years so we use 6, 8 and 10 year benchmarks. We show assumed rates of property growth of 3%, 5% and 7% per annum.

- 4.111 Age UK highlighted that the price quoted should be for a specific development rather than an average where there are a variety of developments operated by a given provider.

QUESTION 13(6)

- 4.112 We proposed that event fees should be mentioned in face-to-face discussions to ensure that the information has been brought to the attention of the purchaser.
- 4.113 There was strong support for this proposal. Of the 42 who responded to this question, 38 (90%) agreed, one (2%) disagreed, and three (7%) answered "other". However, the question was potentially ambiguous, as respondents might have interpreted it as meaning either that face-to-face discussions should always be held to highlight event fees; or that face-to-face discussions need not be held, but if they were held, event fees should be mentioned.

Arguments in favour

- 4.114 Some housing with care operators noted that this was already standard practice in the housing with care sector. Retirement Villages Group stated that they require purchasers to sign a statement when reservation is made which confirms that they have been taken through the event fee information and understand its operation.

Arguments against

- 4.115 Some consultees expressed reservations over evidencing the content of face-to-face discussions. NHBC reiterated its concern that this might lead to event fees being elevated above other kinds of fees.

QUESTION 14: INVOLVING MANAGING AGENTS IN THE SALE

- 4.116 We proposed that codes applying to managing agents should reflect similar principles to those applying to landlords and operators for the disclosure of event fees.

Question 14(1),(2),(3)

- 4.117 We asked consultees whether they agreed that managing agents, where the property is sold by them, should comply with requirements on advertising, supply copies of the disclosure documents at an early stage, and hold face-to-face discussions with prospective purchasers.
- 4.118 There were high levels of support for these proposals, and of the 45 responses we received, 39 (87%) agreed, and six (13%) answered other.

Arguments in favour

- 4.119 Many housing with care providers, including Anchor, Enterprise, MHA, and Retirement Villages Group agreed that the principles applying to operators regarding disclosure of event fees would also apply to managing agents.

Other

- 4.120 Age UK argued that the agency coming into first contact or involved in the selling of the property should take responsibility for the disclosure of event fees.

- 4.121 TPO generally agreed with the proposals, but commented:

Regarding face-to-face discussions, this should be a matter of best practice to be offered/requested where deemed necessary, as there is a potential for sales transactions to be delayed due to the availability of a managing agent.

- 4.122 Whilst agreeing that there should be clear mention of event fees in advertising, and that a disclosure document would be useful, FirstPort considered that it may be neither reasonable nor necessary to hold face-to-face discussions in every case.

- 4.123 FirstPort also highlighted that there may be a distinction between managing agents who are specifically appointed by a landlord to deal with property re-sales and those who are not.

Question 14(4)

- 4.124 We considered that a managing agent's failure to comply with rules on event fees would be treated as a failure by the landlord under the usual rules of agency. We asked consultees whether this approach was correct under the current law.

- 4.125 Most respondents agreed that this was the correct approach. We received 38 responses, of which 24 agreed (63%), three (8%) disagreed and 11 (29%) answered "other".

Arguments in favour

- 4.126 Trowers and Hamlins stated that managing agents would be subject to the same requirements as their operators under the normal rules of agency.

- 4.127 The Law Society pointed out that in many cases, the managing agent will be a party to the lease and liable to the tenant for the breach of any covenants. Otherwise, under the principles of agency, the landlord will be liable to the leaseholder.

Arguments against

- 4.128 Estates and Management argued that in as far as the landlord's managing agent was acting as an estate agent, they would be the agent of the vendor leaseholder and not the landlord.

Other

- 4.129 The Leaseholder Association and ARHM highlighted that where “Right to Manage” has been exercised, the landlord will not have had much control in appointing the managing agent.

Question 14(5)

- 4.130 We asked consultees whether it should continue to be the law that breaches of rules on event fees by managing agents be treated as breaches by landlords.
- 4.131 There was much support for this proposal from consultees. 28 of the 34 (82%) responses we received agreed, four (12%) disagreed, and two (6%) answered “other”.

Arguments in favour

- 4.132 Professor James Driscoll was strongly in favour of the proposal and commented that to do otherwise would be a retrograde step.

Arguments against

- 4.133 Hanover Housing Association considered that where the landlord and managing agent are unconnected, except by way of a managing agreement, the landlord should not be liable in this way.
- 4.134 Midland Heart advanced that managing agents should have accountability for their own actions, and not the landlords.

Other

- 4.135 The Leaseholder Association responded:

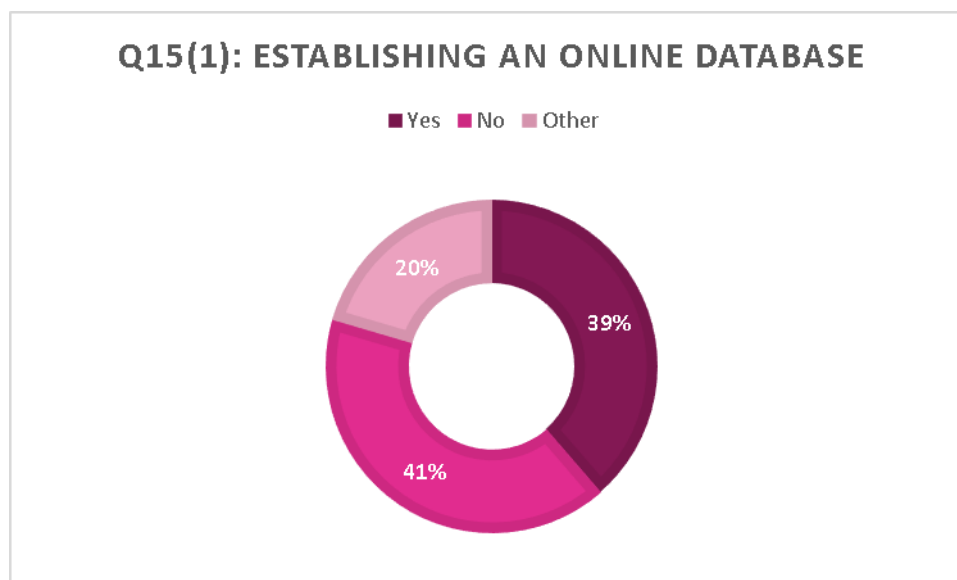
It would be preferable if the party responsible for taking the action on a day-to-day basis is the party that is liable for the breach.

QUESTION 15: WHERE THE PROPERTY IS SOLD BY THE LEASEHOLDER’S ESTATE AGENT

- 4.136 We expressed the view that event fees were most problematic when the lease is sold by one leaseholder to another, as opposed to by the developer, as the estate agent may not be aware of the fee. The vendor may have forgotten about the fee, be in ill health, or have died by the time they come to sell the lease. We set out a range of proposals to ensure that information about event fees is transparent where the property is sold by the leaseholder’s estate agent.

Question 15(1)

- 4.137 We proposed that one way to make information about event fees available to estate agents would be to require the landlord to establish an online database of properties with such information.



- 4.138 A plurality of respondents rejected this proposal. We received 44 responses, of which 17 (39%) agreed with this proposal, 18 disagreed (41%), and nine (20%) answered “other”.

Arguments in favour

- 4.139 Many consultees, including the Law Society, NAEA and the TPO, supported this proposal arguing that a public database would allow for transparency as well as accessibility over information for the prospective purchaser concerning event fees.
- 4.140 TPO observed that a majority of prospective purchasers carry out their research online, and therefore, the benefits of having a database far outweighed the costs justified the initial costs of setting up a database.

Arguments against

- 4.141 Estates & Management considered that establishing the database and providing the required information represented a “disproportionate requirement in view of the costs”.
- 4.142 ARCO highlighted that this might lead to an undue focus on event fees, where other kinds of fees including service charges may be considerably higher. Further, since long-term operators often charge higher event fees, they argued that this proposal might put them at a disadvantage compared to those developers without similar long-term incentive.

Other

4.143 EAC came forward with an offer to expand its pre-existing online database for these purposes. It suggested that an alternative to establishing a database was to expand its existing HousingCare directory of retirement housing developments to include information on event fees. It argued that expanding the EAC's existing database would be faster and more cost-effective than developing a new stand-alone database and web platform. Further, it highlighted that its experience in collecting and disseminating information on retirement properties and its well-respected position in the sector would be valuable in providing information about event fees swiftly and in an accessible manner.

4.144 Age UK appeared to support EAC's approach, suggesting that:

If a database was set up it would be useful if it was linked to the delivery of information to an advice agency such as EAC.... Ideally we would like to see a comprehensive independent advice and information service that wholly represents the interests of older leaseholders.

4.145 ARHM said that the Law Society Leasehold Property Enquiries (LPE) forms which are in use already ought to be the basis for obtaining information on event fees.

4.146 LEASE stated that it may be difficult to monitor the completeness of the database, and suggested:

consideration should be given to amending the Land Registration (Amendment) (No 2) Rules 2005 to the effect that where the lease is for age-restricted premises that the prescribed clause that must appear at the beginning of such leases includes event fees.

Question 15(2)

4.147 We asked consultees whether, in the alternative, it would be sufficient for estate agents to contact managing agents of the property for information on event fees.

4.148 Of the 41 responses we received, most supported this proposal. 21 (51%) agreed, 14 (34%) disagreed, and six (15%) answered "other".

Arguments in favour

4.149 ARCO, MHA, Midland Heart and Orders of St John favoured this proposal noting that information about any applicable event fees, along with a disclosure document, could be supplied without significant delay.

Arguments against

4.150 By contrast, EAC considered that this alternative would lead to a delay, and would not achieve the sufficient transparency required from the purchaser's perspective.

Other

- 4.151 Hanover, Hart, FirstPort and ARHM emphasised the significance of the obligation to provide information to the prospective purchaser, particularly on assignment of the lease, lying with the party who is best placed to do so; typically, the estate agent for the vendor leaseholder.

QUESTION 16: CODES APPLYING TO ESTATE AGENTS

- 4.152 We proposed changes to the codes applying to estate agents to ensure early and prominent disclosure of event fees to prospective purchasers.
- 4.153 We asked consultees whether the codes applying to estate agents should reflect similar principles with regard to event fees as those applicable to landlords and their managing agents.
- 4.154 There was resounding support for this proposal, with all 41 responses received (100%) agreeing with the proposal.

Arguments in favour

- 4.155 FirstPort emphasised the importance of the estate agent in the sale process, and NHBC stressed the importance of consistency across letting and sales channels.
- 4.156 TPO explained that it has now revised its code to require estate agents to include in sales particulars the existence and level of event fees. While it considered that expecting the agent to examine the lease was not practicable, the agent must take reasonable steps to ascertain the scope of any additional fees. It stated:

The current TPO Code of Practice makes provision for estate agents to disclose event fee information that they are aware of... Furthermore, once a mechanism for providing estate agents with the disclosure document has been established, this will also be reflected in TPO's Code.

Question 16(1)

- 4.157 We proposed that every advertisement which mentions the price of a property subject to event fees should also be required to mention the event fee.
- 4.158 There was strong support for the proposal. 33 (84%) of the 39 responses agreed, three (8%) disagreed, and three (8%) answered "other".

Arguments in favour

- 4.159 Age UK argued:

The event fee should always be mentioned in the advertising so that prospective purchasers are in a better position to assess the full cost of the scheme and make cost comparisons.

Arguments against

- 4.160 Estates & Management disagreed with the proposal as they considered it to be disproportionate,

particularly in light of the other fees and costs it is not proposed to highlight, and which may be as or more significant, such as estate agency commission, solicitor's fees, or stamp duty.

Other

- 4.161 Some operators in the housing with care sector, such as Anchor and ARCO, stated that a note such as "additional charges apply" should be placed wherever prices are mentioned and extend to other charges including service charges.

Question 16(2)

- 4.162 We asked consultees whether the estate agent should be required to supply a copy of the disclosure document when a prospective purchaser views a property with an event fee.
- 4.163 Most consultees supported this approach. We received 39 responses, 34 (87%) of which agreed, three (8%) disagreed, and two (5%) answered "other".

Arguments in favour

- 4.164 TPO responded that the disclosure document should be made available with the advertisement for the property to avoid potentially unnecessary viewings and that the decision to view the property is treated as a transactional decision under the CPRs.
- 4.165 Providers of housing with care, including Enterprise, Midland Heart, MHA and ARCO, stressed that the operator should have been given the opportunity to prepare a disclosure document before the viewings are arranged.

Arguments against

- 4.166 HBF, PegasusLife and McCarthy & Stone argued that this might lead to incorrect information being given to the prospective purchaser.

Question 16(3)

- 4.167 We asked consultees whether estate agents should encourage prospective purchasers to talk directly to the agent or manager responsible for the property, when selling specialist retirement housing.
- 4.168 There were high levels of support for this suggestion. Of the 42 responses to this question, 38 (90%) agreed, two (5%) disagreed, and two (5%) answered "other".

Arguments in favour

- 4.169 Anchor and MHA, who agreed with this proposal, considered that the manager or the agent responsible for the property would be best placed to provide information on event fees.

Arguments against

- 4.170 Some managing agents disagreed with this proposal. FirstPort argued that the managing agent should only be required to provide a disclosure document and that the purchaser's conveyancer should be relied upon for specialist advice. They considered that this proposal might lead to the estate agent passing on their responsibility for disclosing event fees, leaving it to the consumer to seek it out.
- 4.171 Estates & Management preferred the provision of a disclosure document as a more certain way of communicating information about event fees. It added:

We consider this is an unrealistic proposal as often complex lease terms such as event fees are not suitable for ad hoc explanation or discussion between purchasers and site staff or other employees of managing agents.

Other

- 4.172 Age UK suggested that, in addition, the estate agent should also be required to provide details of any residents' associations so that the purchaser can discuss any concerns with them before deciding one way or another.

QUESTION 17: CONVEYANCING PROTOCOLS

- 4.173 We asked consultees whether it should be standard procedure for conveyancers to talk through event fees with their clients.
- 4.174 45 consultees responded to this question and there was strong agreement with the proposal. 42 (93%) agreed and three (7%) answered "other".

Arguments in favour

- 4.175 The Law Society supported this proposal, highlighting that questions about event fees were now included in the revised Leasehold Property Enquiries (LPE) forms. The Society has also set out guidance for the public about buying retirement flats to raise awareness of event fees payable in such properties.
- 4.176 EAC commented that event fees should be clearly defined as an "adverse term" and that legal documentation, supplied by the agents to the purchaser's solicitor, include details of such fees.

Other

- 4.177 NHBC stated:

We are not sure it is necessary to "talk through" event fees but is essential that event fees and other important information relating to the conveyance is drawn to the client's attention in writing by the conveyancer.

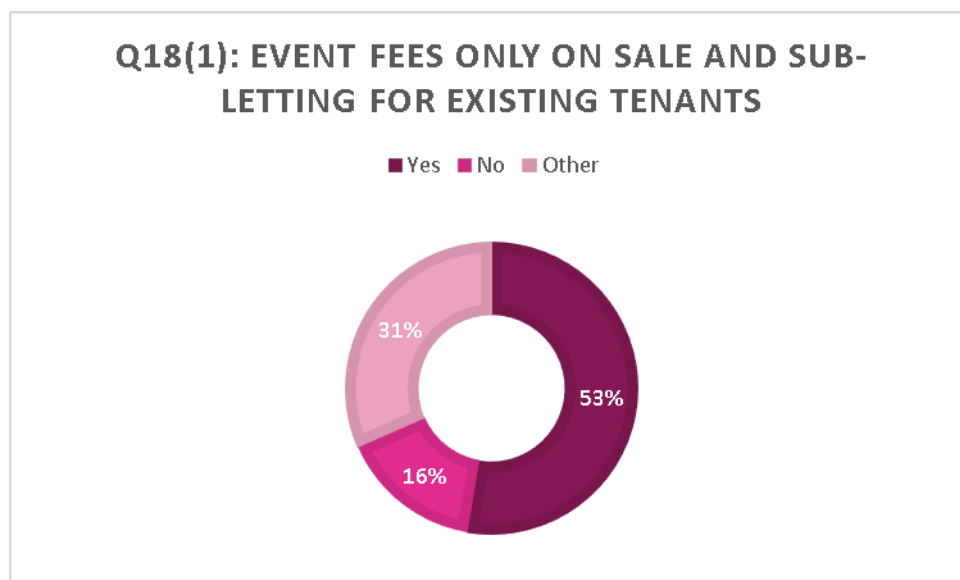
QUESTION 18: UNDERTAKING TO EXISTING TENANTS

- 4.178 We detailed the concerns surrounding existing leaseholders and explained the problems in enacting legislation to overturn the event fee terms in existing leases.

- 4.179 We suggested that landlords should voluntarily agree certain terms with existing leaseholders. This appeared to lead to some confusion among consultees. For the avoidance of doubt, this suggestion did not purport to be a statement of the law, or of what was best practice, at the time that the leases were entered into. It was not intended as a challenge to the proposition that the law that applies to a given lease is the law that was in force at the time of its creation (except where retrospective interventions are made by positive law).
- 4.180 As a whole, the strength of arguments in response to this proposal weighs against it being adopted as the best solution to the question of how to help existing leaseholders.

Question 18(1)

- 4.181 We asked consultees whether landlords should voluntarily agree with existing tenants that event fees will only be applied on sale or sub-letting.
- 4.182 Views were split in the 38 responses we received to this question. 20 consultees agreed (53%), six (16%) disagreed and 12 (32%) answered “other”. Consultees tended to distinguish between event fees charged on sale and sub-letting.



Arguments in favour

- 4.183 The Leaseholder Association considered that contributions to the sinking fund should only be paid on the first occasion of sub-letting and that event fees should be restricted to a reasonable fee for administration costs.
- 4.184 ARCO agreed that landlords should clarify that they will not apply event fees for a change in occupancy where carers might move in, upon mortgage, or any change in title which does not affect the regular occupation by a qualifying leaseholder.

Arguments against

- 4.185 A housing with care provider argued that existing tenants can be expected to be aware of event fees terms and under which conditions event fees are triggered, rendering an express agreement unnecessary.

Other

- 4.186 Christopher Jessel cautioned that a unilateral undertaking may operate as an estoppel against the landlord, and questioned whether such an undertaking would bind a future landlord or benefit a future tenant, without a variation of the lease.
- 4.187 Surrey Law Society, LEASE and Age UK considered that event fees should only be charged on sale, and not on sub-letting.
- 4.188 The CMA noted that it might be difficult to achieve consistency across the market with this approach, and suggested including these provisions in the relevant codes of practice for landlords and their managing agents. It highlighted that a breach of the code may be actionable under the CPRs.
- 4.189 Further, the CMA emphasised that any legislative measure seeking to regulate event fees in existing leases would need to comply with the Human Rights Act, but that it may be justified in the public interest, for example, to deal with existing legal uncertainty as to the application of unfair terms legislation to event fees.

Question 18(2)

- 4.190 We asked consultees whether landlords should voluntarily agree with existing tenants that, on sub-letting, event fees will not be calculated as a percentage of the open market value of the property.
- 4.191 A range of views were expressed in the 38 responses we received. 20 (53%) agreed, 11 (29%) disagreed, and seven (18%) answered “other”.

Arguments in favour

- 4.192 Many residents, who were existing leaseholders, and consumer groups responded strongly in favour of this proposal. Patricia Adams commented that that the event fee on sub-letting should be fixed, and Alan Eadie thought that it should relate only to the administrative costs incurred by the landlord.

Arguments against

- 4.193 An operator in the housing with care sector objected to this proposal as it would render the calculation of event fees on sub-letting particularly difficult for existing leases.

Other

- 4.194 ARHM noted in their response that this may become a means to avoid event fees if the property were to be sub-let indefinitely. They considered that a percentage of the monthly rent or an option to pay the event fees on the first sub-let to be more appropriate.

- 4.195 LifeCare Residences responded that, despite not permitting sub-letting on their leases, they could see the merit in permitting landlords to structure their business model according to their needs, so long as there is proper disclosure of any fees payable.

Question 18(3)

- 4.196 We asked consultees whether landlords should voluntarily agree with existing tenants that except where purchasers had been given illustrations on the effect of the fee calculated as a percentage of the sale price, the fee should only be levied as a percentage of the lower of the purchase price or the sale price.
- 4.197 Fewer than half of the respondents agreed with this proposal. We received 40 responses, 17 (43%) of which agreed with the proposal, 14 (35%) disagreed, and nine (23%) answered “other”.

Arguments in favour

- 4.198 The Leaseholder Association commented:

If the event fee is in reality a deferred premium to the price then the critical point is that it should be transparent and the buyer should know it is part of the price deferred. One assumes most buyers would like it fixed as a percentage of the buying price so the total price is known.

Arguments against

- 4.199 Many operators who provided housing with care, such as LifeCare Residences, Anchor, Midland Heart and ARCO, were strongly opposed to this proposal on the basis that this would retrospectively impose higher standards on disclosure as they did not apply at the time at which the agreement was entered into.
- 4.200 One such operator was particularly concerned by this proposal, and estimated the financial impact of these proposals on their business to be around £9 million. Furthermore, they highlighted that the effect might be to treat future tenants more harshly than existing tenants, since the former group would only have to pay the fee based on their purchase price.
- 4.201 LifeCare Residences highlighted that the requirement for illustrative worked examples was not recognised until the OFT Report in 2013.
- 4.202 By contrast, some residents and consumer groups were in support of the proposal that fees should not be charged as a percentage of the sale price. Age UK considered a fee based on a percentage of the sale price could not be justified.

Question 18(4)

- 4.203 We asked consultees whether landlords should write to their current tenants who are subject to event fees, explaining the effect of the undertakings they have given.

- 4.204 There was much support for this proposal. Of the 44 responses we received, 31 (70%) agreed with the proposal, six (14%) disagreed, and seven (16%) answered “other”.

Arguments in favour

- 4.205 ARHM supported this proposal as it would promote transparency.
- 4.206 Age UK emphasised that many leaseholders may not be aware of their landlords’ undertakings unless they were informed in this way, and thought that this would also benefit relatives who might inherit the property.

Arguments against

- 4.207 HBF and McCarthy & Stone opposed the proposal, and commented:
- This is an onerous retrospective requirement. Existing tenants will be informed prior to sales under the Law Commission proposals.
- 4.208 MHA expressed concern that:
- this could potentially cause negative emotional responses from residents and impact on wellbeing. Providers could also potentially have volumes of calls and queries which they may find difficult to manage, which could exacerbate the situation.
- 4.209 EAC expressed concerns that this proposal might lead to increased legal challenges that may detract from the intention to build certainty in the sector.

5. OUR APPROACH TO REFORM

- 5.1 We explained our approach to reform in this area and highlighted that event fee terms had the potential to be unfair if they were not presented in a way that allowed consumers to understand the term or properly take it into account.
- 5.2 We explained that we were not minded to propose an outright ban on event fees and did not consider that event fees could be treated as service charges, administration charges or charges for granting consent, and therefore lay outside the existing statutory protections available for tenants in residential leases.

QUESTION 19: REJECTING AN OUTRIGHT BAN

- 5.3 We rejected an outright ban on event fees as it would operate retroactively and undermine the certainty of the law. Further, there are benefits to event fees in allowing older people to defer the costs of living in a specialist retirement property and making it more affordable.
- 5.4 The majority of consultees agreed with this approach. Of the 44 responses to this proposal, 29 (66%) supported it, eight disagreed (18%) and seven answered "other" (16%). Of those responses which disagreed, five were from residents and consumer groups.
- 5.5 A number of consultees drew a distinction between different kinds of event fees, and, in particular, distinguished between contributions to a contingency or sinking fund, and fees charged on sale or sub-let of the lease.

Arguments in favour

- 5.6 Many housing with care operators highlighted that older people preferred to defer costs until the sale of the lease, which permitted them to enjoy the benefits of living in housing with care without having to pay for the services up-front. LifeCare Residences noted that they had developed business models based on the focus group feedback they received which reflected a preference for deferred payments.
- 5.7 FirstPort highlighted that event fees especially contributions to the contingency fund helped keep service charges low for residents.
- 5.8 A housing with care provider argued that was that the ban on event fees would have a severe impact on the development of specialist retirement housing for older people and cause major disruption to the sector.
- 5.9 Some residents supported this proposal on similar grounds. Robert Holland said:

The landlord has to make a profit and introducing a ban would be likely to slow down the provision of the retirement properties needed in the UK.

- 5.10 Orders of St John stressed the wider benefits of encouraging development of specialist housing for older people by not banning event fees. Under-occupied family homes would be freed up because of older people who wished to do so being able to move into homes which suited their needs more appropriately. Further, pressure on healthcare services and social services could be eased if older people are able to afford specialist housing.

Arguments against

- 5.11 Consultees who disagreed with our approach expressed concerns about “exit” fees, by which they meant fees that were not payable in return for any service.
- 5.12 Age UK strongly opposed “exit fees” arguing that, even if the proposals on making event fees more transparent were enacted, it will remain difficult for purchasers to judge whether a fee is justified. However, it acknowledged that in a small proportion of the schemes, such as retirement villages and housing with care, exit fees could be useful as a form of deferred service payment and enable the services to be made more affordable for residents.

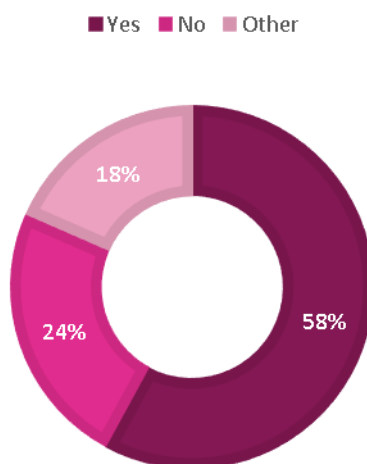
Other

- 5.13 Christopher Jessel suggested that it might be possible to “write down” event fees over a period of time, as with rentcharges under the Rentcharges Act 1977. He thought that reform could provide for existing event fees (other, perhaps, than service charge event fees) to reduce over a period by a formula laid down in legislation.

QUESTION 20: NO ASSESSMENT AGAINST COSTS REASONABLY INCURRED UNDER SECTION 19 OF THE LANDLORD AND TENANT ACT 1985

- 5.14 We considered that event fees should not be brought within the ambit of section 19 of the Landlord and Tenant Act 1985 as attempting to assess an event fee against the service provided may require an extensive amount of detailed information and undermine the nature of the bargain struck between the parties.
- 5.15 Among the 38 consultees who responded to this question, the majority – 22 (58%) – agreed, nine (24%) disagreed, and seven (18%) answered “other”.

Q20: NOT ASSESSABLE UNDER SECTION 19 OF THE LANDLORD AND TENANT ACT 1985



Arguments in favour

- 5.16 ARCO emphasised that:

Event fees could be collected to offset a wide range of services or purposes. It would be very difficult to assess these against the fees collected.

- 5.17 The Law Society noted that applying the residential service charge regime to event fees would encourage argument and litigation.

Arguments against

- 5.18 Christopher Jessel disagreed with the proposal, commenting on the need for control of a fee that represents a significant proportion of the re-sale value. Although he recognised that it may be difficult for a tribunal to assess the reasonableness of the fee he thought that this is not an impossible task.
- 5.19 Age UK said that residents should be allowed to scrutinise the costs of the services provided to them regardless of the complexity of assessing them.

QUESTION 21: NOT EXTENDING CONTROLS ON ADMINISTRATION CHARGES

- 5.20 We considered that event fees charged by the landlord or manager in return for acting as the vendor leaseholder's estate agent should not be classified as administration charges and subject to the controls set out in Schedule 11 of the Commonhold and Leasehold Reform Act 2002. We asked consultees whether they agreed with our proposal.
- 5.21 Most respondents agreed. Of the received 40 responses we received, 26 (65%) agreed, 11 (28%) disagreed, and three (8%) answered "other". Of those who disagreed, eight were residents or from consumer groups.

Arguments in favour

- 5.22 The Law Society and LifeCare Residences noted that reform in this area may be rendered futile as landlords may be able to circumvent these provisions by drafting their event fee terms accordingly.

Arguments against

- 5.23 CILEx considered that where the property could only be sold using the landlord's sales service, the fees should be subject to regulation.
- 5.24 The Leaseholder Association considered that the definition of an administration charge should be amended to include any services charged to individual leaseholders, such as advice to potential purchasers. This would involve more than just the provision of information or documents and dealing with applications for approvals.

QUESTION 22: NOT EXTENDING CONTROLS ON CHARGES FOR GRANTING CONSENT

- 5.25 We proposed that section 19 of the Landlord and Tenant Act 1927, which prohibits fees being charged for obtaining the landlord's consent to assignment, sub-letting, charge or parting with possession, should not be amended to cover event fees.
- 5.26 There was strong support for the proposal. 36 consultees responded to this question, of whom 27 (75%) agreed. Eight (22%) disagreed and one (3%) answered "other".

Arguments in favour

- 5.27 The Law Society agreed with this proposal, and noted that section 19 was not appropriate to deal with issues arising out of event fee disputes as they were not concerned with the landlord's consent but with the nature and extent of the fees.
- 5.28 Christopher Jessel similarly commented:

The mischief is quite different. Section 19 ... [is] aimed at a landlord using a normal control on assignment to extract an unexpected charge. Event fees are foreseen and written into the lease.

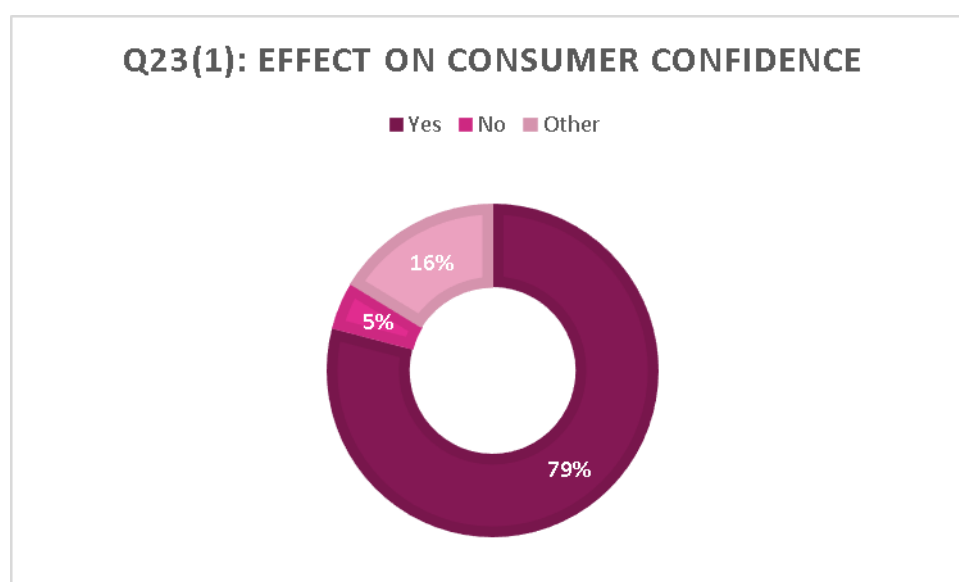
6. ASSESSING IMPACT

- 6.1 We considered that our proposals would have significant economic benefits: encouraging consumer confidence by removing hidden fees; and promoting legal certainty in this area to allow investors to invest and builders to build with confidence.
- 6.2 In assessing the costs, we considered the additional costs that would result from our proposals including familiarisation costs, the cost of setting up an online database with information about event fees and having a face-to-face discussion with prospective purchasers.

QUESTION 23: EFFECT ON CONSUMER CONFIDENCE

Question 23(1)

- 6.3 We asked consultees whether our proposals will increase consumer confidence in the specialist housing market for older people.



- 6.4 We received 43 responses to this question which strongly supported our view that our proposals will increase consumer confidence. 34 (79%) consultees agreed, two disagreed (5%), and seven (16%) answered “other”. 11 of the 16 residents who answered this question agreed that consumer confidence would increase as a result of our proposals.

Arguments in favour

- 6.5 Anchor, ARCO, The Leaseholder Association and many residents considered that consumer confidence would be improved as a result of our proposals. Eliminating poor practice over disclosure of event fees in the sector and providing enforceable remedies to consumers were advanced in support of this view.
- 6.6 LifeCare Residences highlighted that countering negative publicity caused by the lack of transparency amongst some retirement housing providers will help the market grow strongly to meet the housing and care needs of older people.

- 6.7 Some residents also considered the effect that increased consumer confidence would have more widely. Mrs Patricia Adams commented:

Highly desirable in view of family size house shortage and will engender additional confidence and understanding of ramifications of down-sizing to a retirement leasehold property (against a freehold situation). This should release more family size houses onto the market.

Arguments against

- 6.8 Alan Boorman, a resident, disagreed, arguing that:

As long as these event fees continue, confidence in the retirement property sector will always be tainted with uncertainty and the feeling of unfairness.

Other

- 6.9 FirstPort pointed out that, in many cases, it is the estate or the relatives of the leaseholder who will be involved in the sale process. Since they are unlikely to have been involved in the initial purchasing process, there remained some risk of a lack of confidence in the sector because bereaved relatives did not know about event fees so could not alert the estate agent to their existence at the time of sale.
- 6.10 LKP highlighted that parts of the sector are using ground rents as an additional income stream, rather than event fees, which may act to reduce consumer confidence.

Question 23(2)

- 6.11 We asked consultees what effect an increase in consumer confidence would have on the market.
- 6.12 We received 37 responses to this question.
- 6.13 A number of consultees considered that greater consumer confidence would lead to more specialist housing being built.

Effect on certainty and confidence

- 6.14 Many consultees, particularly housing with care operators and retirement housing developers such as Retirement Villages Group, PegasusLife and McCarthy & Stone considered that the effect on the market would be to improve certainty for landlords and tenants, and increase the provision of specialist housing for older people.
- 6.15 Retirement Villages Group noted that uncertainty over event fees has adversely affected the supply of retirement properties in the UK. It expressed concern over the suspicion with which many tenants treated their landlords, and hoped that the certainty offered by the proposals would improve the relationship between landlords and tenants in the retirement property market.

- 6.16 ARCO emphasised the increasing levels of demand for housing with care schemes, and observed that the use of event fees will be particularly beneficial for the “middle market”. It further highlighted that:

Ultimately, clarity over event fees would incentivise operators to build more retirement communities, using innovative funding models (which would need to be clearly and transparently disclosed). We believe this would be of benefit to residents, the NHS, operators and the wider housing market.

- 6.17 On the other hand, CILEx did not think that the effect on the market would be considerable in terms of volume. It considered that the main effect would be to speed up the conveyancing process as conveyancers would know the costs associated with the purchase.
- 6.18 ARHM were concerned that deferred charges could drive down demand or prices as it might not appear an attractive option.

Nature of leasehold property

- 6.19 EAC stressed that a general unfamiliarity with long leases and the hybrid nature of most specialist housing in combining housing with services were also reasons that potential purchasers remain wary about retirement housing options. They proposed a comprehensive advisory service for older people would help to address these information problems.

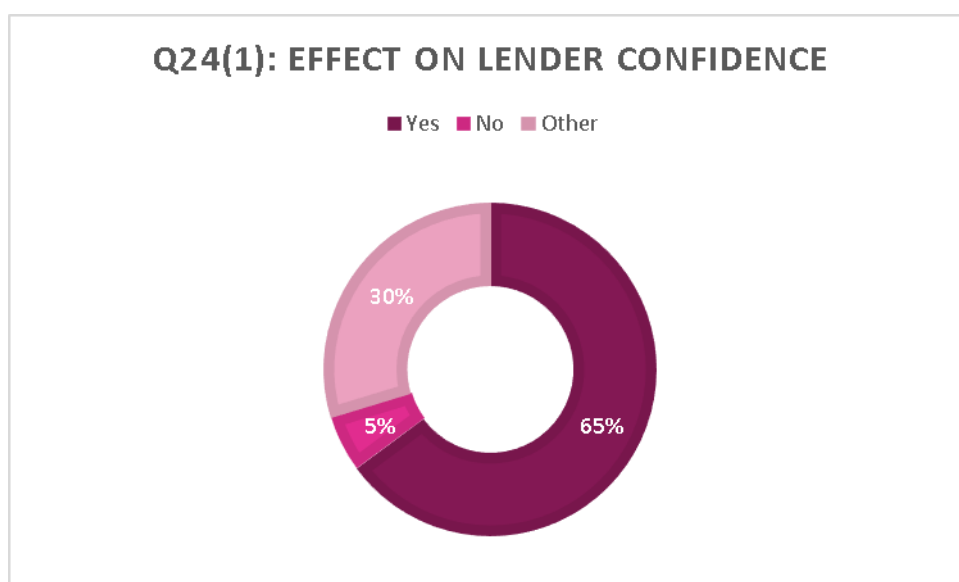
Existing leases

- 6.20 The Leaseholder Association considered that while confidence may be restored to new sales of retirement properties, because of the undertakings given to the OFT and these proposals, the impact on the re-sales of existing leases will be minimal.

QUESTION 24: EFFECT ON LENDER CONFIDENCE

Question 24(1)

- 6.21 We expressed the view that that the legal uncertainty over event fees may reduce the funding that developers can obtain from lenders to build more specialist housing.
- 6.22 We asked consultees whether, following our proposals, event fees which comply with the code of practice will have sufficient legal certainty to meet the standards required for secured lending.
- 6.23 Most consultees agreed that that there will be increased lender confidence. Of the 37 responses we received, 24 (65%) agreed, and 11 (30%) made other comments. Only two (5%) disagreed.



Arguments in favour

- 6.24 ARCO stated that it had consulted with its funding partners and investors who considered that they would feel more confident that the proposals would satisfy their requirements for lending if enacted and in full.

Arguments against

- 6.25 LKP took the view that uncertainty would remain, saying:

In their current form the proposals will inevitably still leave some uncertainty for lenders because of the volatility of property values in this sector of the market. We do not agree with the view that poor second hand values are due to the condition of a particular flat. We would argue the poor valuation reflects the shortcomings in the tenure of the property.

Question 24(2)

- 6.26 We asked for evidence from consultees on the effect that removing the current legal uncertainty over event fees may have on the volume of lending available.
- 6.27 We received 14 responses which made the general point that there would be increased lending available as a result of increased certainty that the proposals will bring.
- 6.28 A housing with care provider described the difficulty their business had faced in obtaining loans after the OFT investigation. They considered that resolving the uncertainty would increase bank lending and attract new participants to the sector.

6.29 Richard Martin, who works for an investor in the retirement property sector, set out the difficulties that lenders have faced in valuing income streams coming from event fees because of the lack of legal certainty. The result has been to treat them as not suitable collateral to support funding requirements. He emphasised that legal certainty over event fees will lead to established valuations and increased debt funding being made available to the sector.

6.30 Similarly, Trowers and Hamlins said:

A consistent message we hear is that event fees were able to be attributed a value by valuers for loan/investment and other business modelling purposes prior to the OFT report on transfer fees, whereas after that report they have been attributed a nil value... . Clarifying the application of the law to event fees in retirement community operation must, therefore, give scope for a return to the original position.

QUESTION 25: SAVING THE COST OF SETTING UP EXPRESS TRUSTS TO HOLD CONTINGENCY FEES

6.31 Under our provisional proposals, managing agents would no longer be required to establish express trusts to hold event fees paid into a sinking fund or contingency fund. We considered that this would save the legal and administrative costs of establishing an express trust.

6.32 We welcomed evidence from consultees about the legal arrangements by which contingency funds are currently held. In particular, we asked consultees whether agents and developers incur legal and other costs in establishing express trusts.

6.33 We received 24 responses which indicated that landlords and managing agents have very varied practices surrounding contingency funds.

6.34 Anchor responded that they only operated trust accounts in a small number of their developments as they were time-consuming to manage. They told us that trust accounts caused some discontentment among leaseholders because of the low rates of interest payable.

6.35 FirstPort, by contrast, responded that they always hold contingency funds on trust since service charges are required to be held on trust. They did not consider the costs of doing so to be prohibitive, and absorbed them.

6.36 Estates & Management reported that any fees and charges it incurs in setting up bank accounts with designated trust status are recoverable as service charge expenditure.

6.37 The Law Society noted that:

In many cases, arrangements are made for funds retained by landlords to be kept in separate trust accounts. This practice is widely used in commercial leases and is recommended by the RICS in the Code of Practice for Service Charges in Commercial Property. The administrative costs of making the arrangements are not substantial.

QUESTION 26: FAMILIARISATION COSTS

- 6.38 We noted that there may be costs associated with estate agents, managing agents, operators and developers familiarising themselves with the statutory changes and the requirements of the codes of practice.

Question 26(1)

- 6.39 We asked for evidence on the training currently given to estate agents about the Consumer Protection from Unfair Trading Regulations 2008 and consumer codes of practice. We also asked how far the current proposals would add to the cost of this training.

- 6.40 We received 22 responses to this question.

- 6.41 Retirement Villages Group said:

Where we retain agents we provide training so this is an existing cost, which we are increasing. It is not a material cost however and is one we regard as an investment in our future so does not represent any impediment to encouraging better sales practices for the benefit of consumers.

- 6.42 TPO responded that any additional costs will depend on the level of activity required by estate agents following the final recommendations of the Law Commission. Where agents would be required to interact with managing agents and other parties, there would be associated costs in training and guidance required.

- 6.43 NAEA explained that it:

runs courses on the Consumer Protection Regulations for members and non-members. The topics the course covers include the Consumer Rights Act, fees and display, unfair trading and permitted activity, property descriptions and how to get them right.

- 6.44 NHBC pointed out that the Consumer Code for Homebuilders offer free online training for sales agents on its code.

Question 26(2)

- 6.45 We asked for evidence about the number of managing agents, operators and developers who would need to familiarise themselves with the proposed changes and how this is likely to be conducted. We received 17 responses.

- 6.46 NAEA said that its membership comprises 9,500 estate agents' offices and confirmed that it will be informing them about any changes.

- 6.47 The housing with care operators including Enterprise, MHA, and LifeCare Residences confirmed that as ARCO members they follow the ARCO code which already details a high standard of disclosure (of all fees, not just event fees).

- 6.48 Retirement Villages Group expressed concern about how “internet only” estate agents who charge a low fixed fee, would be able to afford to manage face-to-face viewings if these were required for the purchase of a specialist retirement property.

QUESTION 27: ONLINE DATABASE

Question 27(1)

- 6.49 We proposed that landlords should establish an online database to provide information about event fees. We sought evidence on the costs of setting up a new online database to provide information to estate agents about the event fees.
- 6.50 We received 22 responses.
- 6.51 EAC commented, drawing on its experience of maintaining its own database of specialist housing schemes, that the most significant costs will arise from collecting the data on rather than making it available in a database.
- 6.52 Estates & Management similarly estimated that the costs of setting up a database for a portfolio of similar size to theirs would be in the region of £1 million, excluding the costs of uploading event fee terms from the leases, or the costs of ongoing maintenance of the database.
- 6.53 Win Cummins was supportive, suggesting that the Chairman or the Company Secretary of each developer company could be held to be personally responsible for keeping the information up-to-date, incurring personal fines for a failure to do so.

Question 27(2)

- 6.54 We sought information about the costs of alternative ways of providing the information swiftly and in an accessible format. We received 19 responses.
- 6.55 Anchor suggested that providing an extract of the Sellers and Purchasers Information Pack would make details of the sinking fund and the service charge payable available. This would be a simple way to provide information to estate agents quickly and would have a minimal cost impact.
- 6.56 Robert Holland noted that although most buyers would rely on their solicitor to guide them when purchasing a property, an increasing number of buyers are aware that there is a lot of useful information available on the web. An easily accessible website which provided authoritative guidance on these matters would be of great benefit. He also highlighted the need to consider how to alert people who have no access to computers.
- 6.57 The Leaseholder Association pointed out that leases can already be downloaded from the Land Registry website. They considered that most Estate Agents have access to this and could acquire the information easily, particularly if event fee terms could be made “prescribed clauses”.

QUESTION 28: PREVENTING EVENT FEES IN CIRCUMSTANCES UNRELATED TO SALE OR SUB-LETTING

- 6.58 We expressed the view that restricting event fees to sale or sub-letting will not have significant costs for the industry because many developers have waived fees charged otherwise or given formal undertakings to that effect.
- 6.59 We asked if developers collect event fees on death, mortgaging or change of occupancy, in circumstances which do not involve a sale or sub-letting and if so, how much is collected in this way. We received 24 responses to this question.
- 6.60 Surrey Law Society and Win Cummins stated that, in some cases, event fees are collected on the death of a spouse. Robert Holland stated, under the terms of his lease, the event fee will be triggered by any other disposition other than the death of the first tenant.
- 6.61 ARCO stated that in the housing with care sector, in the vast majority of instances, event fees are only collected on the sale of the property. In some cases event fees may be payable when changes in occupancy occur although not when carers or partners move in, or properties are mortgaged.
- 6.62 McCarthy & Stone said that they do not collect event fees in circumstances other than sale or sub-let and were not aware of other developers that did.

QUESTION 29: FACE-TO-FACE DISCUSSIONS

Question 29(1)

- 6.63 We asked when a retirement lease is sold through the vendor's estate agent, how far agents and managers hold face-to-face discussions with prospective purchasers. We received 24 responses which reflected varied practices among landlords and managing agents.
- 6.64 NAEA stated:
- Many specialist retirement houses are marketed by the developers or advertised by local estate agents. Prospective purchasers can contact sales teams directly to receive further information and/or set up a meeting with the manager of the development.
- 6.65 TPO urged consideration of online estate agents who provide a reduced service, as compared to a traditional agent, which includes little or no face-to-face discussion. It highlighted that the increase in the number of such online agents emphasised the need for an online database to which purchasers can be directed.

Evidence of face-to-face discussions

- 6.66 Retirement housing developers such as HBF, PegasusLife, and McCarthy & Stone, who responded also stated that for them, face-to-face discussions were the norm.

6.67 Many housing with care providers, including Anchor and Enterprise, who responded confirmed that they would usually hold face-to-face discussions with prospective purchasers before they move in. Often a health assessment will also be required which involves a face-to-face discussion.

6.68 Retirement Villages Group confirmed that, in their model, all prospective purchasers including those introduced by the vendor's agent will have to meet with the manager who will explain the event fees and service charge arrangements to them. It added:

The prospective resident has to sign a form confirming they have been through this interview and had these matters explained to them. And have received a key facts sheet and worked examples.

6.69 Nevertheless, MHA remarked generally that in its experience:

there is significant room for improvement in the interaction and communication by selling agents with scheme managers and prospective purchasers. The provisions of the code could help this.

Buying without a face-to-face meeting

6.70 Many residents who gave accounts of their experiences indicated that face-to-face meetings may not be current standard practice. Alan Eadie, for instance, stated that there had been no face-to-face interaction in his experience.

Arguments against

6.71 ARHM considered that, although some members' leases require approval of purchasers, face-to-face discussions were not the norm across the sector. It considered that the onus should not be put on the landlord/manager when there is no legal requirement for them to hold a meeting to disclose information.

6.72 FirstPort explained that such meetings rarely take place in its experience, and it is more typical for there to be a telephone conversation or email correspondence. It considered that any requirement to hold a face-to-face meeting would add significant cost to the process.

Question 29(2)

6.73 We asked if our proposed code of practice provisions should encourage estate agents should encourage and facilitate face-to-face meetings with prospective purchasers would add to costs.

6.74 Of the 30 responses we received to this question, fewer than half agreed. While 13 (43%) agreed, 7, (23%) disagreed, and 10 (33%) answered "other".

Arguments in favour

6.75 TPO reiterated that face-to-face meetings regarding event fees should be a matter of best practice to be arranged where required.

Other

- 6.76 Whilst believing that this proposal might add costs to estate agents, both ARHM and ARCO made the point that selling a property to an older customer requires additional skills and care which might make it more expensive in any case.
- 6.77 Both Dr Roberts and Michael Garrick considered that there is scope for any charges to be absorbed by estate agents. Win Cummins suggested that it should be borne by the developer who is making money out of the sale.
- 6.78 A housing with care provider considered that rather than increase costs, quite the opposite could occur because:

A clear comprehensive grasp of all the transactional issues usually leads to a swifter sale (for the same fee).

QUESTION 30: OTHER COSTS

- 6.79 We asked for evidence about other costs which may result from our provisional proposals. We received 15 responses to this question.
- 6.80 ARCO explained that:

While there may be other costs associated with these proposals (for example for internal compliance audits or for producing an auditable evidence trail), our members believe that these additional costs would be justified if the Law Commission's proposals were to result in a robust framework that safeguarded the rights and interests of consumers, and provided certainty over operating procedures and operating income.

- 6.81 LKP considered the additional cost of not implementing the changes to be relevant:

The current costs of a poor retirement sector impacts on through the whole housing structure. Any change to improve the retirement sector will inevitably benefit through the rest of the system.

7. LEAFLET QUESTIONNAIRES

- 7.1 We designed and distributed leaflets enclosed with questionnaires for residents in specialist retirement housing which summarised the concerns over event fees terms and explained our core proposals for reform in an accessible manner. Residents could use the enclosed questionnaire to respond to our consultation.
- 7.2 We received 109 such responses from residents.

QUESTION 1

- 7.3 We asked consultees if they had experience of “event fees” payable, for example, on sale, sub-letting or moving out of a retirement property.
- 7.4 94 respondents answered this question. We were seeking to learn about residents’ experiences of purchasing retirement property. Some misunderstood the question, answering that they did not have experience of event fees because they had not sold or sub-let their retirement property as yet. However, most answered with details of their event fee clause and how, if at all, they had been informed about it prior to purchase.
- 7.5 The responses we received demonstrated the wide range in the type and extent of event fees that residents are subject to. The level of awareness of the event fees, prior to purchase, appeared to vary quite significantly too.

Type and extent of event fees

- 7.6 The most common examples of event fees were those payable on sale or sub-letting of the property. Many were payable into the contingency fund, typically as a percentage of the re-sale value.
- 7.7 Several residents responded that, on re-sale their lease provided for 1% to be paid to the landlord, and 1% into the contingency fund. Some were very unhappy with having to pay these event fees.
- 7.8 Mrs Esme Dando, for example, described the difficulty she had faced with letting her retirement flat, and felt stuck in a property that she was not able to afford:

Had I at any time realised what was involved with the purchase of leasehold property NO WAY would I (and my husband at that time) have agreed to purchase... It was only after the purchase of flat no. 2 that I discovered that if I attempted to let it for even the odd few days, the “event fees” had to be paid every time the tenant changed.
- 7.9 Another common type of event fee was the “Deferred Membership Fee” or “Deferred Management Charge” which was payable on sale of the lease. In these properties, the residents were generally not permitted to sub-let.
- 7.10 These kinds of fees tend to be higher than other types of event fee. Mrs Marguerite Finlayson responded:

The apartment I have bought does have a DMF [deferred management fee] clause in the agreement and has been increased since I moved in from 20 to 30%, but at 30% the service charge is to remain static for the duration of my stay here. I welcome that as I only have old age pensions, so I do not have to worry about increased charges during my ownership. One just hopes that property prices do not go down!!

Awareness of event fees prior to purchase

- 7.11 The responses indicated varying levels of awareness about event fees prior to purchase of a retirement property.
- 7.12 Some residents responded that they were not told about the event fees until they had exchanged contracts. Several said that they were not told about their event fee liabilities until after they had moved in, when the other residents informed them.
- 7.13 By contrast, others told us that they were made aware of the event fees clauses in their lease, and knew the details of what they would have to pay at the end.
- 7.14 One resident said:

The terms of when event fees become chargeable were explained in some detail when we considered buying into a leasehold retirement village. They are also clearly set out in our lease.

QUESTION 2

- 7.15 We asked residents whether they agreed that they should be told about event fees when they first visit the retirement property as prospective purchasers.
- 7.16 There were high levels of support for the proposals. Of the 109 responses we received to this question, 107 (98%). 2 (2%) disagreed, but did not provide reasons for doing so.

Arguments for

- 7.17 Many residents thought this was essential to ensure transparency. They considered that information on event fees was highly likely to affect their decision to buy. It was also important to assess their liabilities and to plan for their estate.
- 7.18 Mrs Pat Wootten, for example, said:

This is essential as potential buyers need to know (a) whether they can afford all charges associated with the purchase, (b) if relevant, their families are aware of their commitment and the impact on their inheritance, and (c) financial planning – impact on death duties/probate (if appropriate).

- 7.19 Some residents stated that having the information on the advertisement for the property would be the best way to draw their attention to it.

QUESTION 3

- 7.20 We asked residents whether they would have found a disclosure statement useful, giving details of fees, when they were looking into buying a retirement property.
- 7.21 There was unanimous agreement in the 109 responses to this question with all expressing favour for the proposal.

Arguments for

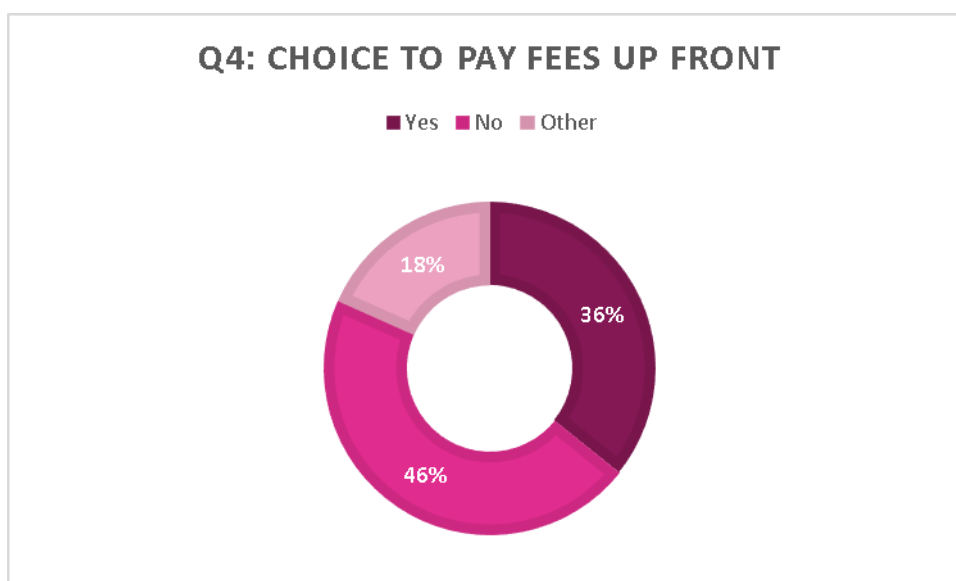
- 7.22 Many residents pointed out that, even where information about event fees was given, it was not obvious and insisted that clear and plain language ought to be used.
- 7.23 One respondent, responding on behalf of a parent living in a retirement property, said:

Although it was in the paperwork it was “small-print” type of thing so a more obvious statement would be good – I can see how people might miss it.

- 7.24 Mr and Mrs Teague were strongly in favour of this proposal, saying that older purchasers may not be familiar with complicated legal matters. They noted that many residents are shocked by the extent of their liabilities once they move in, and considered that a disclosure statement would be useful to ensure clarity over the obligations of the tenant.

QUESTION 4

- 7.25 We asked consultees whether they would welcome an option to pay a fixed fee up-front, rather than pay a percentage of the price when they come to sell.
- 7.26 Views were split among the 109 residents who responded to this question. 39 (36%) agreed, 50 (46%) disagreed, and 20 (18%) answered “other”. However, this question appears to have been misunderstood by many respondents, as discussed below.



Arguments for

- 7.27 Many residents supported the prospect of having a choice on how to pay the event fees. One respondent, writing on behalf of a parent living in retirement property, said:

In our case we would rather have the percentage taken when it is sold as my mother might have found a fixed fee up-front difficult, but others might prefer that. SO long as there is a choice.

- 7.28 Some residents favoured this proposal because of the certainty it would provide them with. They would know how much their estate would be worth, and there would be no payments outstanding.
- 7.29 Further, some residents thought that paying up-front would be financially favourable for them especially where the property had risen in value.

Arguments against

- 7.30 Many residents who disagreed with this proposal appeared to have misunderstood it. They seemed to consider that the option to pay up-front would either entirely replace the current payment option to defer event fees, or that they would operate in addition to those options. Therefore, many responded that purchasing retirement property was expensive enough without having to pay more by way of fees.
- 7.31 Some responses indicated that there was not much appetite among residents for an option to pay up-front. They argued that it would be better to retain any capital for living expenses and service charges, rather than use it to pay off event fees.
- 7.32 Others who disagreed tended to oppose event fees being charged altogether. For example, Ms Halcyone Marsh stated:

Why does one pay any fee on selling which is one's own flat already?

Other

- 7.33 Some residents highlighted that if all the residents in a block were not paying event fees on relatively similar terms it could result in unfairness. One such resident said:

Unless the fixed up-front fee covers say the first 3 or 5 years and then reverts to a percentage for any length of ownership thereafter. Otherwise we do not think it would be fair to all owners. It either has to be fixed for all residents or percentage for all residents.

QUESTION 5

- 7.34 We asked residents whether they considered that event fees could be useful to make retirement living more affordable and, if they did not, whether they would like to see such fees banned.

- 7.35 The responses reflected a range of views with the majority in favour of banning event fees. We received 108 responses, of which 35 (32%) agreed that event fees could be useful, 64 (59%) disagreed, and 9 (8%) answered “other”.

Arguments for

- 7.36 A number of respondents agreed that event fees could be a useful way of making retirement living, and its associated benefits, more affordable.

- 7.37 A respondent, who was writing on behalf of her mother, said:

My mother has really gained from being in a retirement flat. She is 99 years old and still able to be independent with the support of a good manager and carers and family. Without these flats, many people would have to go into care at an early stage – so I would worry about anything that would make it more difficult to live in one. For all the faults, they are a good idea.

- 7.38 Cherie and Richard Hall explained that a deferred fee has enabled them to enjoy a better standard of living. They added:

We cannot envisage a situation when such fees should be banned.
What are the alternatives? – Rising maintenance fees.

- 7.39 Another resident, considering the contributions to sinking funds, cautioned that without the event fee capital repairs may cost more than what a resident could afford to pay leading to uncertainty and worry. Further:

Such an unknown commitment might well be a deciding factor in whether to downsize in the first place. It is not feasible to ban such fees totally as there would be no funds for any ongoing major repair works and failure to undertake such works would decrease the value of your property.

Arguments against

- 7.40 Many residents who disagreed drew a distinction between payments into a contingency fund and fees charged on sale or sub-let of the property, taking issue with the latter kind.

- 7.41 The primary objection to “exit fees” or “transfer fees” was that they provided no corresponding benefit to the residents. Therefore many responded that such fees were unfair and should be abolished.

Other

- 7.42 Some residents considered that banning event fees would not be possible.

- 7.43 For example, Reg. Kirman said:

Again this is relevant to individuals' personal finances. Fees have been paid and I cannot see how they can be banned. The companies providing retirement villages are, after all, in business and not charitable organisations.

7.44 Mrs J Stevens said:

The purchase price needs to be discounted below actual market value, maintenance charges also need to be capped for the duration of your stay. In accepting such a scheme to fix some of your outgoings you must recognise the costs to be borne by your estate.

QUESTION 6

7.45 We welcomed any other comments or thoughts on our proposals. We received 50 responses.

7.46 Many residents raised concerns over other kinds of fees they were liable to pay to the landlord which are outside the remit of this consultation. Nonetheless, some representative views have been reproduced here.

Excessive charges

7.47 There was a significant concern over fees paid for the house manager or warden's flat, the use of the guest suite, and for works carried out on site.

7.48 A respondent writing on behalf of their parent said:

There ought to be more protection for people living in these [retirement] flats to ensure that do not pay excessive charges, for the warden flats and so on. Money ought to be kept from the service charges apart in a separate bank account by the landlord. More regulation and supervision is needed. The existence of these flats ought to be promoted and made more secure, which would free up larger family homes to help the housing shortage. More ought to be built in fact.

Depreciation in value

7.49 Some respondents expressed concern over the drop in value of their lease.

7.50 Mrs S A Coles said:

I would like to know why those apartments never hold their price when you come to sell them or have to give them away.

Other types of fees

7.51 Many residents were discontented over the range of fees that they had to pay to the landlord. There was some general discontent over having to paying for the warden's flat and for a guest suite.

7.52 Some highlighted the inconsistencies in service charges payable and the management of the housing block. M G Hewer, for instance, said:

We also paid £500 for furniture in the lounge. With 72 flats this came to £36,000. The furniture did not cost that much. We will pay £30,000 in to the contingency fund this year. This building is not 10 years old.

There was also concern that the residents were paying different levels of event fees, as between themselves, and that there had been a mismanagement of the contingency fund which had led to an increased fee over the years.

Abolition of leasehold

7.53 A number of residents considered that the leasehold system was inherently unfair and called for its abolition.

7.54 Mrs Esme Dando, for instance, said:

I feel very strongly that leasehold is altogether an unfair system. Unfortunately we have so many people in Parliament who gain personally from it, no change will ever be voted in.

Transparency

7.55 A significant proportion of respondents highlighted the need for transparency over fees in retirement property.

7.56 Many emphasised the benefits of living in such specialist housing. Mrs Pat Wootten recounted her experience of buying retirement property:

Before coming to [this retirement village] we asked for detailed info regarding DFM (exit fees) and service charges. We then did our sums before purchasing, having discussed our decision with our family. Absolute transparency re exit fees – service charge and optional services cost is essential to avoid the possibility being accused of taking advantage of vulnerable elderly people or homes being sold to people whose families do not agree with purchase or who have insufficient funds.

7.57 Some residents stressed that they would not have made the decision to buy a retirement property had they been informed of all the fees.

7.58 Many responses stated that more was needed, where older people were concerned, to achieve transparency. They noted that the older consumer may be in a vulnerable state because of a recent bereavement, or may be struggling with the process of moving altogether. Mr and Mrs Teague recognised that transparency will enable confidence in the sector to be restored:

Yes - there is a downside to transparency and disclosure statements and yes - it could affect resale prices but at least it would allow confidence to return to this sector of the market - if honesty prevails. The majority view is that leaseholders owning property is the worst option of all for retired people - and this should never be!