HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Freehold houses: estate charges

By Wendy Wilson

Summary

It is standard practice for long leaseholders in blocks of flats to pay a service charge to cover the cost of maintaining the building and its common areas. Long leaseholders have statutory rights in terms of information about service charges and an ability to challenge the reasonableness of the charges, and/or whether the service provided is of a reasonable standard, at a First-Tier Tribunal (Property Chamber) or the Leasehold Valuation Tribunal in Wales.

It is becoming increasingly common on new-build private estates for **freeholders** to be required to contribute to the maintenance of the estate's communal areas and facilities. These owners **do not** have equivalent rights to leaseholders in terms of information about the charges and a right to challenge the level of the charges. The practice has been referred to as 'fleecehold'.

This short paper provides background on this issue and sets out the Government's proposals for reform. Legislation will be introduced "when Parliamentary time allows".

The paper mainly covers England. Section 7 covers Wales.

1. The legal basis of estate charges

It is relatively common for private estates with freehold houses[1] to include a provision in the deed of transfer which places a duty on the owners to contribute to the maintenance of the estate's communal areas and facilities. The deed of transfer should state:

- What the freeholder is expected to contribute towards.
- The proportion of costs they should pay.
- Dates on which payment is due.

[1] The estates may form a mixture of freehold houses and leasehold flats.

Alternatively, liability might arise through an estate rent charge that forms part of the purchase contract.

The Minister, Kit Malthouse, outlined how these arrangements might arise as part of a planning condition in a PQ response of 12 December 2018:

> Developers of new estates may voluntarily provide open spaces for residents or be required, as a planning condition, to include public open spaces and make provision for its future upkeep. It is up to developers and local planning authorities to agree appropriate funding arrangements for those developments where public open space is a planning condition.[2]

The Government published a consultation paper in July 2017, Tackling unfair practices in the leasehold market, which described the different ways in which arrangements for estate charges can be structured:

> The developer can set up a Residents' Management Company that owns the communal areas and facilities. The Residents' Management Company may upkeep the communal areas and facilities itself or employ a managing agent to act on its behalf. Alternatively, the developer can retain the ownership of the communal areas and facilities, and the responsibility for their maintenance. As in the case of a Residents' Management Company, the developer can carry out the maintenance directly or through a managing agent, who is accountable to the developer under the terms of the management contract. However, other approaches may be used to provide for the long-term management of shared areas and facilities.[3]

2. Freeholders' concerns

It is a bone of contention amongst freeholder owners that they have limited rights to challenge the level of charges and the standard of service provided. Rights which may be conferred in the deeds or in common law can be contrasted with the statutory rights leaseholders have to challenge the same charges and management standards. The Association of Residential Managing Agents (ARMA) published an advice note for freeholders in this position: Freehold houses on private estates (revised August 2017).

Helen Goodman summarised freeholders' complaints during a Westminster Hall debate on Freehold Estate Fees which took place on 22 January 2019:

> There needs to be more transparency and a system of redress, as my hon. Friend says. There also need to be some rules of the game about the standard to which the estates are built in the first instance. The management companies charge residents an inflated annual fee—in exchange, apparently, for tending to grassy areas, shrubs and other facilities on the estate. That is on top of their council tax.
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> This is a scandal. There has clearly been mis-selling. The public perception of freehold is deliberately exploited by the property companies in their sales materials. Many homebuyers are not made aware of the arrangements for the management of open spaces until the completion of the sale. One of my constituents reported that the first they had heard of their management company, which was Greenbelt, was a threatening late payment letter. They had not received a bill, let alone a welcome pack.
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> There is no room in the glossy brochure for an outline of the legal arrangements, but there always seems to be plenty of space for images of parks, playgrounds and woodland areas, backed up by verbal assurances from the sales rep that they are

2 Written question – 198765, 12 December 2018
3 DCLG, Tackling unfair practices in the leasehold market, July 2017, para 6.2

> planned for the estate. Those promises are then broken and the land is passed or sold on to the maintenance company.
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> For example, at DurhamGate, a large housing development in Spennymoor in my constituency, the plans promised a "green spine" running through the centre of the site. Several years in, and with the site still under construction, residents are being hit with a full-price fee of £120 a year. Another of my constituents reported receiving a maintenance bill for a parking area that did not exist. The fees charged to residents for the maintenance of their estates are high, rising, uncapped and completely unregulated.
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> In Bishop Auckland, the annual fee for each household is somewhere between £100 and £200 a year, depending on the site. At first that does not sound too onerous, but when we consider that 278 neighbours on the estate are also paying the fee, it is obviously a grossly excessive £30,000 just for mowing some grass. In other parts of the country, in line with higher house prices, fees can be up to £400 or £600; I have even heard of fees of £800 a year. There is no limit to price increases and residents frequently report an annual leap in the fee. As my hon. Friends have said, there is no transparency and little accountability.[4]

There were several references during this debate to freeholders being required to pay for services that they believe should be covered by their Council Tax payments.

3. Government approved redress schemes

Where the charge is collected by a property agent in England an affected freeholder may be able to raise a complaint through the relevant redress scheme. Managing and property agents in England have had to be a member of a Government approved redress scheme since 1 October 2014.[5] The Regulations provide for complaints against members of the scheme to be investigated and determined by an independent person. Local authorities are empowered to enforce compliance by imposing a fine of up to £5,000 on a non-compliant agent, with a right of appeal to the First-Tier Tribunal. For additional information see: Lettings agents and property managers: which government approved redress scheme do you belong to?

4. Government proposals

Tackling unfair practices in the leasehold market (July 2017) asked for views on whether the Government should:

> …promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?[6]

The consultation paper said that "the Government wants to promote appropriate rights for all freeholders living on private estates to challenge the reasonableness of service charges."[7]

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4 HC Deb 22 January 2019 c121WH
5 *The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014* (SI 2014/2359)
6 DCLG, Tackling unfair practices in the leasehold market, July 2017, para 6.5
7 Ibid., para 6.5

In Tackling unfair practices in the leasehold market: government response (December 2017) the Government said it would legislate:

> …to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed use estate can access equivalent rights as leaseholders to challenge the reasonableness of service charges.[8]

In part 4 of a further consultation paper, Implementing reforms to the leasehold system in England (October 2018) the Government confirmed an intention to "replicate consultation requirements and obligations on the provider of services to provide information to the freeholder."[9] The paper posed the following questions:

- How we give freeholders an equivalent right to leaseholders so they can challenge the reasonableness of service charges levied through a deed of covenant or an estate rent charge;
- Whether there are any justifiable reasons why freeholders should not have a mechanism to change the provider of the services covered by a deed of covenant or an estate rent charge. In particular whether a right to apply to the tribunal to appoint a new manager is appropriate; and
- What the impact of these changes would be on companies or bodies that provide the long term management of communal areas and facilities.[10]

The outcome of the consultation exercise was published on 27 June 2019: Implementing reforms to the leasehold system in England: summary of consultation responses and government response. The Government committed to:

- **Equal rights for freeholders**: we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987).
- **Right to Manage for freeholders**: we will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported to the Government (on their review of Right to Manage for leaseholders) as part of creating greater parity between leaseholders and residential freeholders.[11]

The Law Commission's final report: Leasehold home ownership: exercising the Right to Manage was published on 21 July 2020.

The intention is to bring forward legislation as soon as Parliamentary time allows.[12]

The Government also set out an intention to require **all** developers of new-build homes to be members of an Ombudsman scheme.[13] Measures have been included in the draft Building Safety Bill which is currently subject to pre-legislative scrutiny by the Housing, Communities and Local Government Select Committee.

Protecting consumers in the letting and managing agent market: call for evidence, (October 2017) sought views on whether an overhaul of regulation in the property agent market was needed. The call for evidence closed on 29 November 2017; the Government

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8 DCLG, Tackling unfair practices in the leasehold market: government response, December 2017, para 80
9 MHCLG, Implementing reforms to the leasehold system in England, 15 October 2018, para 4.4
10 MHCLG, Implementing reforms to the leasehold system in England, 15 October 2018, section 4
11 MHCLG, Implementing reforms to the leasehold system in England: summary of consultation responses and government response, 27 June 2019, p9
12 Written question – 68411, 8 July 2020
13 MHCLG Press Release, 1 October 2018

response was published in April 2018.[14] The response included a commitment to regulate managing agents "to protect leaseholders and freeholders alike".[15] A single, mandatory and legally enforceable Code of Practice covering letting and managing agents will be introduced which will set minimum standards in certain key areas of activity. Managing agents will be required to have a nationally recognised qualification to practice. An independent regulator will own the Code of Practice and will have enforcement powers. A Working Group led by Lord Best was established to develop the regulatory regime. The Group's report was published in July 2019.[16] The key features of the proposed regime include:

- The regulatory framework should cover estate agents across the UK and letting and managing agents in England. All those carrying out property agency work should be regulated, including rent-to-rent firms, online agents and property guardians. Some exclusions would apply, including the short-let sector, but legislation would allow for the future extension of regulation.
- The Government should create a list of 'reserved activities' which can only be performed by la licensed property agent at a regulated firm.
- Property agents and qualifying agents should be required to hold and display a licence to practise from the new regulator. The regulator will check that the agent has fulfilled their legal obligations and passed a fit-and-proper person test. The regulator should be able to vary licensing conditions and maintain records of licensed property agents.
- All property agents should be required to adhere to a code of practice which is described as "a single, high level set of principles applicable to all property agents which is set in statute". Underneath would sit regulatory codes specific to various aspects of property agent practice.
- All agents would have to ensure their staff are trained to the appropriate level. The Group recommend that licensed agents should be qualified to a minimum level 3 of Ofqual's Regulated Qualification Framework. Company directors and managing agents should be qualified to a minimum of level 4. The requirement for qualifications would apply only to licensed agents who carry out reserved activities. The regulator would set and review a modular syllabus. Continuing professional development should also be mandatory for licensed agents.
- The regulator would provide information on managing agent performance and would have a role in enforcing compliance with any new requirements in relation to leasehold/freehold charges which will apply to managing agents.
- The regulator should be a new public body which is accountable to the Secretary of State at MHCLG. It should publish an annual report on progress in raising standards of property agents. Funding would come from regulated firms and individuals but initial 'seed corn' funding would be provided by the Government.
- The regulator should take over responsibility for approving property agent redress and client money protection schemes. The regulator would be able to consider complaints from all sources.

14 Ministry of Housing, Communities and Local Government (MHCLG), Protecting consumers in the letting and managing agent market: Government response, April 2018
15 Ibid.
16 Regulation of Property Agents Working Group – Final Report, July 2019

- The regulator would have a range of enforcement options from agreeing remedial actions to revocation of licences and prosecutions for unlicensed practice. Rights of appeal would apply to the First-Tier Tribunal.[17]

The Group recommended that the new regulator should be given a statutory duty to ensure transparency of leaseholder and freeholder charges, and should work with the sector (property agents, developers and consumers) to draw up the detail of the regulatory codes to underpin this aim as it applies to property agents.[18]

5. Housing, Communities and Local Government (HCLG) Select Committee inquiry 2017-19

The HCLG Select Committee launched an inquiry into leasehold reform on 24 July 2018. The Committee's report was published on 19 March 2019.[19] The written evidence submitted to the inquiry, together with the oral evidence sessions can be accessed on the Committee's website. Although the inquiry focused on leasehold reform, the final report included recommendations on charges paid by freeholders.

The Committee commented on 'permission fees' in relation to new-build freehold dwellings:

> The growing practice of imposing permission fees in the deeds of new-build freehold properties and enfranchised former-leasehold properties is an unjustified intrusion upon homeowners which many campaigners have rightly referred to as 'fleecehold'. The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so.[20]

The Government response was published on 3 July 2019:

> The Government agrees in principle with the Committee that it can see few circumstances where a permission fee should be required for a freehold property. The Regulation of Property Agents working group chaired by Lord Best will consider in what circumstances such fees are justified and whether they should be capped or banned. The Regulation of Property Agents working group is expected to report back to Ministers later this summer. The Government will consider recommendations made by the working group alongside those made by the Committee on leasehold and freehold fees and charges, and we will consult as necessary.[21]

The Committee also recommended that:

> There should always be a clear agreement between developers and local authorities before a development begins as to the public areas and utilities that are to be adopted by local authorities. These details must be provided to prospective purchasers at the start of the sales process.[22]

The Government response points to the fact that local authorities can use conditions or section 106 planning obligations to secure commitments from developers on the maintenance of open and communal spaces on new developments – this means

17 Ibid., pp3-6
18 Ibid., p4
19 Leasehold Reform, HC 1468, Twelfth Report of 2017-19, 19 March 2019
20 Ibid., para 138
21 CP 99, 3 July 2019, para 65
22 Leasehold Reform, HC 1468, Twelfth Report of 2017-19, 19 March 2019, para 160

authorities do not have to adopt and maintain the land at its own expense and "it is up to developers and the local planning authority to agree appropriate funding arrangements as part of these commitments."[23] There is a commitment to update guidance on planning obligations and conditions "to reaffirm that there should be a clear agreement between developers and local authorities about public areas and utilities that are to be adopted."[24] The Government agrees that potential purchasers should be clear about arrangements in place for the upkeep of open spaces and roads.[25]

The HCLG Committee expressed support for legislation to extend the existing rights of leaseholders to challenge the fairness of fees to freeholders. The Committee supported the introduction of a standardised form "which clearly identifies the individual parts that make up the overall charge".[26]

The Government response also referred to the work of Lord Best's Regulation of Property Agents Working Group which recommended the introduction of a standardised form for service charges and permission fees.[27] The Government committed to considering the Committee's recommendations alongside those of the Working Group and to consult as necessary.[28]

6. Comment

Helen Goodman presented the *Freehold Properties (Management Charges and Shared Facilities) Bill 2017-19* on 14 November 2018 under the Ten Minute Rule procedure. The Bill's purpose was the:

> …regulation of fees charged by management companies to freeholders of residential properties; to make provision for self-management of shared facilities by such freeholders; to require management companies to ensure shared facilities are of an adequate standard; and for connected purposes.[29]

When asked whether the Government would support the Bill, the then Minister, Heather Wheeler, said:

> The Government is committed to legislating to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed tenure estate can access equivalent rights as leaseholders to challenge their reasonableness. We set out our approach to implementing this commitment in part 4 of the consultation '*implementing reforms to the leasehold system in England'* which was published on 15 October. We will consider our position on the Ten Minute Rule Bill once the detail has been published.[30]

During her Westminster Hall debate on 22 January 2019, Helen Goodman called for the Government to go further:

> Legislation to improve access to dispute resolution is helpful, but it does not tackle the root problem. The Freehold Properties (Management Charges and Shared Facilities) Bill, which I introduced in November, recommended three changes for homeowners who are already caught in this trap. First, it would cap and regulate estate maintenance fees, to give homeowners financial stability and allow them to buy and

23 CP 99, 3 July 2019, para 72
24 Ibid., para 73
25 Ibid.
26 Leasehold Reform, HC 1468, Twelfth Report of 2017-19, 19 March 2019, para 163
27 Regulation of Property Agents Working Group – Final Report, July 2019
28 CP 99, 3 July 2019, para 75
29 HC Deb 14 November 2018 cc324-6
30 Written question -191310, 20 November 2018

> sell their homes knowing that costs cannot increase indefinitely. Secondly, it would introduce measures to ensure that shared spaces are maintained to a proper standard, perhaps through something similar to the new homes ombudsman. Thirdly, it would contain provisions for residents if they chose to opt out of their management company and to self-manage, if that was what they wanted to do.
>
> For estates yet to be built, the planning regulations need to be tightened, to require them to be built to an adoptable standard. Local authorities are currently often willing to adopt spaces in exchange for an agreed sum from the developer to cover upkeep for a fixed period. For example, Durham County Council asked for 15 years' worth. That is a reasonable ask of an industry that can afford to pay its chief executive officer bonuses of £75 million.
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> Many of these estates were built with support from the Government's Help to Buy scheme, financed by taxpayers. I would like the Minister to tell us this afternoon that the Government are going to stop providing support to any development using that model. Will the Minister also refer the mis-selling aspect of this to the Financial Conduct Authority to investigate, and to the Law Society, to strike off lawyers who have worked unethically in the interests of property dealers while taking fees and purporting to work for homebuyers?
>
> A situation has arisen whereby the private estates model is rapidly becoming the norm for new developments, with those who have saved hard for their homes bearing an unfair burden and builders treating them as a cash cow. Homeowners do not want sympathy and understanding. They want action, and they would like to see action now. I hope the Minister will be able to make a clear, timetabled commitment this afternoon.[31]

Sarah Jones questioned the impact of giving freeholders the right to challenge charges at a tribunal in light of recorded difficulties that long leaseholders face when seeking to challenge service charges using the same channel:

> We know from the Government's own repeated consultations on fixing the leasehold sector that the system currently in place for leaseholders is not working. People are not going to trial because they fear the complexity and potential cost of the process. Property companies turning up with teams of lawyers make an imbalance and a mockery of the system.
>
> [...]
>
> Why are the Government presenting access to tribunals as the solution when that has abjectly failed to stop abuses in the leasehold sector?[32]

Responding to the debate, the Minister reiterated the intention to extend leaseholders' rights to challenge service charges to freeholders and said the Government was considering "whether freeholders should have a right to change the provider of maintenance services by applying to the tribunal for the appointment of a new manager".[33]

The Minister provided a detailed response to the question of whether the services freeholders are required to pay for should be met by Council Tax contributions:

> It has been argued that local authorities should be compelled to adopt all communal facilities on a new estate. At this point it is worth pausing to consider planning arrangements and how they support new developments. When a new development is granted planning permission, local authorities can use conditions, or a section 106 planning obligation, to secure a commitment from developers to provide and maintain open and communal space. This means that the local authority does not have to adopt or maintain the land at its own expense.

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31 HC Deb 22 January 2019 c123WH
32 HC Deb 22 January 2019 cc129-30WH
33 HC Deb 22 January 2019 c131WH

> It is up to developers and the local planning authority to agree appropriate funding arrangements as part of those commitments. Conditions and planning obligations cannot, however, currently be used to compel local authorities to do something. The local authority has powers to ensure that developers build and maintain communal facilities to the standards and quality set out in the planning permission. In terms of roads, local highways authorities are responsible for the maintenance of local public roads in England. A decision on whether to adopt a road is a matter for the local highway authority and the Government have no direct role in that process.
>
> It has been suggested that freeholders who pay these charges should receive a rebate in their council tax. We think that argument is misplaced. The amount of council tax due from each of us is not adjusted to reflect the specific level of services we receive as residents of the area. Instead, the level of council tax helps the authority to deliver a broad range of services to the wider community in its area. It is open to local authorities to offer council tax discounts to individuals or groups of taxpayers. This is an entirely local decision.
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> In the end, all these matters have to be paid for. There is only so much money that can be extracted from a particular housing development. It is therefore at the discretion of local authorities to decide the balance of 106, the cost to them of adopting measures, and where and when maintenance should fall on residents rather than on the local authority.
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> It should always be clear to potential purchasers what the arrangements are for the upkeep of open space and the maintenance of roads. However, we do not think that requiring local authorities to adopt all communal facilities on new developments is the right approach. It removes local flexibility and, in our view, sends the wrong message to developers about their responsibilities.[34]

Helen Goodman said she would take the matter up with the Financial Conduct Authority.[35]

7. Wales

Legislation introduced in Westminster will not automatically apply in Wales.

Freehold estate charges were debated in the Welsh Assembly following a Member's Legislative Proposal on 14 March 2018. The proposal suggested bringing in similar reforms to those consulted on in England. The motion was agreed; the responding Minister said that the Welsh Government would create a "task and finish group" to look at the matter.

The task and finish group published its report, Residential Leasehold Reform: A Task and Finish Group Report, in July 2019. It suggested several options for reform which are set out on pages 8-9 of the report.

34 HC Deb 22 January 2019 c132WH
35 HC Deb 22 January 2019 c134WH

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