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Commission des Communautés Européennes
(Secretary-General)
B-1049
Bruxelles
Belgium

Dear Sir,

We are writing to you as a group of leaseholders in the UK to bring to your attention the discriminatory and illegal acts of the British Government in regard to leasehold properties.

In England and Wales one can own property as either freehold or leasehold. Freehold implies that you own both the land and the property whereas leasehold is a bizarre form of home ownership. You own your home on a lease, generally 99 years and ownership of the land it is situated on remains vested in the freeholder. This means that after 99 years your lease expires and the land as well as your property situate on it revert back to the freeholder, unless in the interim you have been making payments from time to time to extend your lease or have successfully purchased the freehold. Recently the Scottish Parliament abolished this malpractice.

We believe that the British Government is guilty of price-fixing that contravenes EU Competition Law. We also believe that the balance of power being geared towards freeholders means that leaseholders are subject to significant emotional distress, financial penalties and human rights abuses. Further details of our concerns are set out below.

Reference is made to freeholders and leaseholders in this text. The freeholder in trading terms is the supplier and the leaseholder the consumer and freehold a freely traded commodity within the EU.

We object to the loading of "marriage value." We hope that you can force the British Government to repeal the penalty of "marriage value" legalized under the 2002 Commonhold and Leasehold Reform Act (Section 145 (Ch 15)). The implementation of "marriage value" has made it impossible for most leaseholders to opt out of leasehold by purchasing their freehold. Over the years the cost of "marriage value" has increased tremendously on account of Court rulings.

The formula used to determine "marriage value" under the 2002 Act is based on a sliding scale. The scale itself is a fabrication and is directly related to the unexpired term of the lease. The shorter the lease the more you pay. Once the depreciated value is determined as per the scale you pay half of it to the freeholder i.e. (50-50% split) in order to acquire a lease extension or purchase the freehold. Prior to the introduction of marriage value the 1967 Act offered a fairer method of calculation of compensation payable to the freeholder.

Freeholds are freely traded on the open market as a speculative commodity. Individuals and companies "trading" freeholds on the open market are exempt from "marriage value." However, the Government

justifies the levy of “marriage value” on leaseholders by claiming that a leaseholder falls into the category of a “purchaser with a special interest” in the property who would stand to gain substantially by the marriage of the two titles, leasehold and freehold. This means that the leaseholder is placed at a commercial disadvantage from the outset. Quite contradictorily the Government does not apply marriage value to leaseholds with an unexpired term in excess of 80 years!

“Marriage Value” causes leasehold interests to depreciate and lending institutions will not entertain a borrowing against the security of a lease that has around 60-65 years unexpired. Non-payment of repair expenditure in excess of £350 results in forfeiture of the lease with no compensation, so a leaseholder who cannot fund repairs from his own resources and who cannot raise money against the security of his home is in jeopardy of forfeiture. The only available alternative would be to dispose of the leasehold interest and, that would be on the assumption that there is enough equity to cover the depreciated value of the lease on the open market and the cost of the proposed works over which the leaseholder has little say. As marriage value runs into many thousands most leaseholders have to borrow to purchase the freehold and may not necessarily meet the mortgagees lending criteria on account of age, available equity, financial status, and a short unexpired term, etc.

This legislation applies to resident and non-resident owners of leasehold in the UK and on this basis that hard-core price fixing applies we believe this is an issue to be dealt with directly by the European Community.

The following heads of breaches would come within the remit of both national and international Competition Law.

Tie-ins: A prerequisite to the acquisition of a leasehold interest is that the tenant subscribes to and agrees to be bound by the terms and conditions of an unfair lease which is biased in favour of the freeholder.

- a) the freeholder determines what repairs or alterations ought to be carried out from time to time at the leaseholder’s expense, often with 10% of the cost going to the freeholder or his managing agent
- b) Throughout the term of the lease the lessee pays the cost of the proposed works. If the lessee cannot fund the work or is in arrears with his ground rent for sums exceeding £350, the landlord may legally institute proceedings for forfeiture, whereby the leaseholder loses not only his home but all the equity in it too. This has always been the case under leasehold law. Under the 2002 Act, despite considerable pressure from leaseholders, no attempt was made to abolish this draconian malpractice. Instead more safeguards were introduced that entail astronomical legal expenses. In some instances leaseholders cannot raise the money for such exercise on account of unsatisfactory security.
- c) The landlord may either manage the property himself or appoint a managing agent of his choice. Leaseholders do not have an automatic right to appoint a managing agent of their choice
- d) The freeholder in most cases insures the building and insurance scams are rampant

Abuse of a dominant position pertaining to Public Sector (local authority) and private sector freeholders –As pointed out the leaseholders have no say in the repairs to be carried and to some extent the cost of such repairs, failure to comply results in forfeiture. Professional landlords knowingly carry out expensive repairs on short leases, where the depreciated value does not justify the expenditure or the lease has less than 60-65 years to run and can no longer be pledged as security for a loan. Public Sector landlords gain from the sheer cost of refurbishing sub-standard quality or older style housing.

Recent legislation has made freeholders richer and consequently more powerful, thereby enabling them to fund protracted legal battles. In sharp contrast leaseholders are being financially drained. They constantly have to pay excessive sums towards repairs and top-up of their leases, if permitted to maintain them above 80 years.

Discrimination – leaseholders pay the “marriage value” as laid down by the 2002 Act whilst individuals and companies can trade freeholds on the open market without the penalty of “marriage value” and ultimately reap the profits by selling it back to the leaseholder. True the leaseholder has the right of first refusal but there must be at least 50% “qualifying members” who can afford or are ready to participate in paying “marriage value.”

Leaseholders only “qualify” for lease extensions if they have owned their home for a minimum of two years. This means they have difficulty disposing of their lease in the short term (Sections 127, 130 & 139 of the Commonhold and Leasehold Reform Act 2002 (Ch 15)).

Discrimination based on the unexpired term of the lease. This is on account of the sliding scale applied to marriage value i.e. a lease with 60 years to run is worth more than a lease with a 40 year term.

Residential leaseholders are prohibited from exercising their right to purchase their freehold, where 25% or more of the entire block is non-residential i.e. commercial (Section 115 of the Commonhold and Leasehold Reform Act 2002 (Ch 14)).

Residential leaseholders are barred from purchasing their freehold if they cannot gain the co-operation of at least 50% of the “qualifying tenants”. This is the norm as most leaseholders cannot afford the cost of “marriage value.” (Section 13 Leasehold Reform, Housing and Urban Development Act 1993 (Ch 28) as amended by Sections 119 and 120 Commonhold and Leasehold Reform Act 2002 (Ch 15).

“Marriage Value” does not apply to leaseholders holding under a lease in excess of 80 years. Strangely, they have been exempt from “marriage value” with complete disregard to the fact that they also come within the Government classification of “purchasers with a special interest.”

Classes of leaseholders who qualify to enfranchise under the more favourable 1967 Act are unlawfully being denied such rights by virtue of the introduction of a new low rent test under the Commonhold and Leasehold Reform Act 2002 (Section 1 Leasehold Reform Act 1967).

We are seeking the abolition of “marriage value” introduced in the 2002 Commonhold and Leasehold Reform Act. We maintain in this instance that the marriage value constitutes legalized hard-core price fixing by the Government.

Such abolition will benefit leaseholders in the following way.

1. It will make purchase of freehold more affordable. Leaseholders may then have the option to opt-out of leasehold if they so wish
2. Going back to the 1967 Act as far a compensation to the freeholder goes will make it easier and will provide a less costly means of determining the price to be paid for the freehold
3. It will discourage and hopefully eventually eliminate the “trading” of freeholds on the open market
4. Leases will no longer be a depreciating asset
5. There will be no discrimination based on the outstanding term of the lease
6. Mortgagees will feel encouraged to lend on short-term leases and leaseholders with short leases will be able to borrow against them.
7. There will be no motivation for freeholders to hold on to their freeholds
8. Forfeiture will be avoidable on account of easy access to loans and cheaper access to purchase of freeholds. This particularly applies to holders of short leases where the equity value is low and repair bills are high and sometimes higher than the equity value of the lease
9. Abuse of the dominant position of freeholders can be curbed by easy and cheap access to the freehold
10. In many instances the cheaper opt-out from leasehold will save leaseholders the unnecessary aggravation and cost of litigation

Furthermore, leases as they stand impose unfair contract terms on the consumer/lessee and need to be addressed so as to provide a fair balance.

The legalized discrimination also needs to be abolished.

1. The two year ownership clause precludes a leaseholder who has held title for less than two years from “qualifying” to purchase an extension.
2. Participation of at least 50% of qualifying leaseholders is a prerequisite to purchase of the freehold. This should be abolished, particularly in instances where the freeholder has retained ownership of flats thereby blocked any approach by others in the block.
3. the discrimination applicable to leaseholders holding under a lease for less than 80 years.
4. The 25% commercial element needs to be addressed

The Labour Party manifesto incorporated abolition of the feudal system of leasehold, instead labour introduced the obstacle called “marriage value” and the 80 year divide, which have been detrimental but served the useful purpose of making the public more weary and aware of the pitfalls in the leasehold system.

In the recent housing consultation paper, London Leaseholders highlighted the issues raised above to the Office of Fair Trading.

A leaseholder wrote to the PM's Office on the subject of price-fixing and no response was received. A reminder was sent out and no response was received to that either.

Upon receipt of this letter could we please have a meeting which will be attended by heads of leasehold organizations in the UK.

A similar letter is being sent to the appropriate department that deals with infringement of EC Competition Law.

Yours faithfully

Denis Sylvester
For and on behalf of
english leasehold reform