

Regulation of Property Agents (RoPA) Working Group

Meeting Minutes

Tuesday 14 May 2019, 11.30am – 1.30pm, Millbank House

Attendees: Lord Best (Chair), Lakhbir Hans (Ministry of Housing, Communities and Local Government – MHCLG), Peter Bolton King (Royal Institution of Chartered Surveyors – RICS), Andrew Bulmer (Institute of Residential Property Management – IRPM), David Cox (Association of Residential Letting Agents – ARLA), Professor Christopher Hodges (Oxford University), Wendy Martin (National Trading Standards - NTS), Richard Lambert (National Landlords Association – NLA), David Pilling (Ombudsman Services – OS), Anthony Essien (LEASE), Mark Hayward (National Association of Estate Agents – NAEA), Secretariat (MHCLG)

Guests: Beth Rudolph (Conveyancing Association - CA), Martin Boyd (Leasehold Knowledge Partnership – LKP), Nigel Glen (Association of Residential Managing Agents – ARMA)

Apologies: Joe Lane (Citizens Advice), Luay Al-Khatib (Royal Institution of Chartered Surveyors (RICS))

1. Introductions and declarations of interest

- Anthony Essien declared LEASE's interest as a body that provides advice to leaseholders.
- Richard Lambert declared NLA's interest in regulation in providing advice to leasehold landlords but not freeholder landlords.
- The Chair made clear that the group's core focus is on the proposed new regulatory framework for property agents and not on the details of changes to current leasehold arrangements which are the subject of other consultations and inquiries. However, he stated that this meeting afforded an opportunity to supplement the group's report as a contribution to that broader debate.

2. Review of minutes from working group meeting, 23 April 2019

The group agreed the minutes.

3. Review of sub-group meeting, 29 April 2019

Anthony Essien, who had chaired this meeting, summarised its findings to members on the discussion around leaseholder and freeholder charges.

4. Short presentations by invited guests

Lord Best, with the group's leave, invited three non-members to make short presentations and to join the group for discussions in light of their technical expertise.

- Beth Rudolph – Conveyancing Association
- Martin Boyd – Leasehold Knowledge Partnership
- Nigel Glen – Association of Residential Managing Agents (ARMA)

5. Transparency

There was consensus among working group members around the need to improve transparency of service charges and other fees and charges faced by both leaseholders and resident freeholders. The following themes were discussed:

- The case for a new mandatory standardised form for service charges;

- Importance of standardised information that is presented (as well as the form) – i.e. cost codes to explain items of expenditure;
- Potential other transparency objectives a standardised form could usefully support, such as mandatory disclosure of commissions, managing agent fees etc; and
- For those within scope of the new regulator, enforcement of a potential new standardised approach to charges information.

6. Consultation around Major Works

The working group members discussed the need to consider improvements around the process for consulting leaseholders around major works (known as section 20 of the Landlord and Tenant Act 1985). The following themes were discussed:

- Need to update the cost threshold to trigger the need for consultation and a potential role for the new regulator to update the threshold overtime;
- Case to introduce a standard form for consultations – so leaseholders become more accustomed to the process to encourage greater engagement;
- Importance of key information to be provided at an earlier stage, such cost implications and if costs are covered by a sinking fund or not – to allow leaseholders to plan their finances; and a
- Possible role for the new regulator to highlight good practice in helping leaseholders manage large bills if they do arise.

7. Large Bills

Working group members considered approaches to helping leaseholders avoid large bills from arising in the first place and how to better protect monies held on behalf of leaseholders. This included discussion of:

- Consideration of mandating the use of sinking funds in new and existing leases - better to plan costs and build up monies in advance than have surprise large bills fall on leaseholders;
- How to ensure sinking funds are appropriately funded and case for them to be linked to a professionally certified asset management plan;
- The new regulator could have a role in policing compliance by managing agents;
- Case to consider insurance backed client money protection for leaseholder monies held as well as improving transparency of monies held (e.g. bringing in 2002 changes to s42a and s42b of the Landlord and Tenant Act 1987); and

8. Capping and Banning

Discussion among the working group on other fees and charges (such as administration or permission fees) and when their use is justified or whether they should be capped or banned. The following themes were discussed:

- Consideration of a framework around how such fees and charges should be deployed – such as mandating a prescribed list of fees (what can be charged for) and tariffs (how much can be charged);
- Importance of providing flexibility for landlords or managing agents in such a regime to for example, apply to the First Tier Tribunal to set higher charges if necessary – plus an

expectation that if charges were capped, they should still be “reasonable” and not automatically charged at the level of the cap;

- Potential role for the new regulator to review both a prescribed list and the level of charge caps to keep them relevant over time; and
- Possible need for guidance on the use of restrictive covenants.

9. Veto and Switching

The working group discussed a range of themes with regards to empowering leaseholders to be better able to veto a landlord’s choice of managing agent or switch agents mid contract if performance standards have not been met:

- Potential role for the new regulator to provide information on managing agent performance to help landlords and leaseholders make the right choice of agent;
- The new regulator could intervene in cases of poor managing agent performance, instead of leaseholders having to wait and exercise a power to veto or switch a managing agent;
- There is merit in considering how consumers could be better empowered to veto or switch an underperforming agent, but a balanced approach is required, whereby leaseholders cannot frustrate the management of their buildings and that any veto or managing agent switch is triggered by a representative group of leaseholders; and
- Case to consider extending Resident Tenant Associations’ powers to simplify removal of an underperforming managing agent (subject to an agreed set of criteria for any veto/switch).

The group agreed that if there are to be disputes between leaseholders and a freeholder over a choice of managing agent, there should be in place a single simple process for resolving disputes either through the regulator, the First-tier Tribunal or an Ombudsman.