Summary of principles applied by Hanover Housing Association ('Hanover') when dealing with transfer fees arising from retirement leases that it owns

Hanover stated that it currently adopts the following principles when dealing with the transfer fees that arise from the retirement home property leases that it owns (that is, in interpreting and enforcing lease covenants).

Key principles

Hanover accepts that transfer fees charged in respect of services undertaken by the landlord, including fees for the landlord to give their consent under a lease (**'Administration' Transfer Fee Terms**) are subject to a test of reasonableness in accordance with the Landlord and Tenant Act 1927 and Commonhold and Leasehold Reform Act 2002, but makes the distinction that fees arising from an event, but not related to the provision of services or consent (**'Non-Administration' Transfer Fee Terms**) are not. These would include transfer fees that become payable in the event of the tenant selling their retirement home property, but where the lease does not require the tenant to obtain the landlord's consent, and the landlord does not provide any service to facilitate the transaction.

1. **'Administration' Transfer Fee Terms (transfer fees charged in respect of services undertaken by the landlord)**

Illustrative examples of 'Administration' Transfer Fee Terms

- *"...upon any assignment transfer or underletting or otherwise parting with possession of the Premises whether to a nominee of the Lessor or otherwise the Lessee shall pay to the Lessor a transfer fee (being in respect of the Lessor's costs in maintaining a waiting list of potential purchasers and vetting and approving proposed purchasers) of 1.5% of the gross sale price or (in the event of an assignment transfer or underletting other than at arms length) the open market value (which in default of agreement shall be determined by the Lessor's Surveyor) within seven days of completion of any such assignment transfer or underletting or of parting with possession of the Premises...".*

- *"On or before the completion of any assignment permitted ... the Lessee shall pay to the Association the reasonable and proper administrative and legal expenses not exceeding 1% (plus VAT where applicable) of the open market value of the demised premises ...incurred by the Association in connection with the Assignment."*

Assignment by way of sale

- Where a lease term entitles Hanover to collect either (i) an administration fee of "up to" or "not exceeding" a certain percentage of the sale price or open market value, or (ii) an administration fee based on a fixed percentage of the sale price or open market value, Hanover only collects a fee that reflects justified administration costs in dealing with the transfer. Hanover accepts that this administration fee is subject to a test of reasonableness under the Landlord and Tenant Act 1927 and Commonhold and Leasehold Reform Act 2002 and can be challenged at the Leasehold Valuation Tribunal.

- Where Hanover does not undertake an activity it does not make a charge - for example, it does not charge for maintaining a waiting list because it does not maintain waiting lists for leasehold properties.

- Hanover accepts that the Leasehold Valuation Tribunal has jurisdiction in any dispute concerning the reasonableness of any administration fee.

Sub-letting and other forms of transfer

- In the event of an underlet or other form of transfer, Hanover would only seek to collect an 'administration fee' based on its justified costs in providing a service and not a percentage fee based on the open market value or sale price.

2. <u>'Non-administration' Transfer Fee Terms</u> (transfer fees due on an event but without reference to any service provided)

Illustrative example of 'Non-Administration' Transfer Fee Term

"On or before the completion of any assignment permitted…the Lessee shall pay to the Association either (i) 2½% of the open market value of the demised premises… if the assignment is to a person nominated by the Association or (ii) 1% of such value if the assignment is to any other person".

Limited circumstances in which a 'Non Administration' Transfer Fee is payable

- Where the lease allows Hanover to charge a 'Non-Administration' Transfer Fee it will normally only charge this on the sale of the property (or in the rare circumstance that a leaseholder surrenders the lease).

- *Sub-letting*: Hanover will normally only charge its justified administration costs when consenting to under-letting and not a percentage 'Non-Administration' Transfer Fee[1].

- *Interests passing to a beneficiary under a will or intestacy*: Hanover will charge a 'Non-Administration' Transfer Fee on the disposal of the interest in the property following the death of the previous owner of the property. However, Hanover will not apply a 'double charge' on both the transfer of ownership from the deceased owner to the beneficiary and on a subsequent sale by the beneficiary, provided the beneficiary acts to sell the interest within a reasonable period of having inherited it and does not occupy the premises themselves (that is, where the beneficiary is merely passing the interest they have inherited on). Hanover might also be willing to apply this principle where the beneficiary has underlet the property, provided that this was only for a reasonable time and they could demonstrate that they had continued to market the property for sale.

- *Equity Release*: Hanover would not charge a 'Non Administration' Transfer Fee solely on the granting of a mortgage or charge on the property for the purposes of equity release or other secured borrowing by the leaseholder. A fee would only be payable in the event that the borrower defaults and mortgagee is obliged to sell the property.

- *Adding or removal of a spouse or partner to or from the lease*: Hanover would not normally charge a 'Non Administration' Transfer Fee upon the adding or removing, for example, of a spouse or partner to the lease[2].

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[1] The only exceptions would be when it is apparent that the leaseholder is under-letting in order to circumvent the payment of a percentage transfer fee contained in the lease. Such circumstances are rare and would likely be characterised by the granting of a long term tenancy to an unrelated party rather than an Assured Shorthold Tenancy (AST). This could also arise when the leaseholder is a body corporate. Whilst Hanover reserves the right to charge a percentage fee in these limited circumstances to date it has never done so.

[2] An exception would be where the addition/removal was to avoid the payment of a transfer fee that would otherwise be due - for example, the addition of a son or daughter who intends to remain in occupation after the parent is deceased.

Reference price used to calculate the 'Non Administration' Transfer Fee

- Hanover will calculate the 'Non-Administration' Transfer Fee based on the sale price of the property.

- Leases entitle Hanover to calculate such fees based on the open market value of the property on sale or transfer. Hanover accepts that in normal circumstances the sale price is the open market value. Where it is apparent, however, that the sale price differs markedly from the expected price for a property at that location, Hanover reserves the right to obtain an independent valuation of the property in order to verify the market value.

Recovery of administration costs

- In practice where a 'Non-administration' Transfer Fee applies Hanover has not sought to also recover an administration fee (for costs of services provided).

- In the few circumstances where the 'Non-administration' Transfer Fee is lower than Hanover's administration costs it will charge its reasonable administration costs, where permitted by the lease.

4. Other Matters

New leases created by Hanover (on the development of a new housing scheme)

- Where Hanover is the author of a new lease, it does not intend to insert a 'Transfer Fee' provision other than to enable it to recover its reasonable costs in dealing with the transfer.

Terms which forbid sub-letting

- Some of Hanover's leases contain an absolute prohibition of sub-letting. In circumstances where Hanover is owner of the freehold and a lease does not allow under-letting, Hanover will seek the views of other leaseholders on the Estate when a leaseholder wishes to underlet. If a majority of leaseholders are in favour of under-letting, then Hanover will usually permit under-letting by electing not to enforce the relevant clause in the lease. In these circumstances Hanover provides a licence confirming its agreement to the underlet and requires that its approved Assured Shorthold Tenancy is used.

- When agreeing under-letting, where a lease allows, Hanover must approve the form of tenancy agreement to be used. It offers an approved Assured Shorthold Tenancy, which leaseholders can elect to use.

Right of Pre-Emption clauses

- A number of leases provide that the tenant must first offer the property to the landlord or the landlord's nominee. In other leases the tenant is obliged to pay to have the property marketed and valued by the landlord's valuer.

- Hanover does not seek to enforce its pre-emption rights against the wishes of a leaseholder or their successors who want to make their own arrangements to sell the property.

- Further, Hanover would not normally wish to exercise its pre-emption rights even when invited to but if it were to do so it would expect the stated fees to be payable in full. Hanover accepts that the fee would be subject to a test of reasonableness and hence open to challenge at the Leasehold Valuation Tribunal.

- Hanover no longer offers estate agency services and does not maintain waiting lists, and as such does not charge for these services.